IN

SUPREME COURT OF THE UNITED STATES

October Term, 1975

Misc. No. [illegible]

RUSSELL BRYAN, INDIVIDUALLY and
On Behalf of all Other Persons
Similarly Situated

PETITIONER

V.

ITASCA COUNTY, MINNESOTA,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF MINNESOTA

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SUBJECT INDEX

TABLE OF AUTHORITY

CASES

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. _____

RUSSELL BRYAN Individually and all
Others Similarly Situated,

PETITIONER,

vs.

ITASCA COUNTY, MINNESOTA

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO
THE MINNESOTA SUPREME COURT

Russell Bryan, individually, and on behalf of all other persons similarly situated petitions for a writ of certiorari to review the judgment of the Minnesota Supreme Court, entered in this Case on April 10, 1975.

OPINION BELOW

The Opinion of the Minnesota Supreme Court is reported at ___ Minn. ____, 228 N.W.2d 249 (1975). A copy of said Opinion is marked as Appendix 1 and attached to this Petition.

JURISDICTION

Petitioner is seeking review of the decision of the Minnesota Supreme Court entered in this case on April 10, 1975. This was the final decision in this case by the Minnesota Courts. This Court has jurisdiction of this Petition for writ of certiorari under 28 U.S.C. Section 1257(3).

QUESTION PRESENTED

1. Whether Public Law 83-280 conferred on the State of Minnesota or its political subdivisions the power to impose a personal property tax on the mobile home of an enrolled Chippewa Indian located on land being held in trust for the Chippewa Indians on the Leech Lake Indian Reservation in Minnesota.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDERS AND REGULATIONS INVOLVED

The relevant Constitutional provisions, statutes, orders and regulations are as follows:

1. The U.S. Const. Art. I, Sec. 8, Cl. 3: "To regulate commerce with foreign nations and among the several states and with the Indian tribes;"

2. The Treaty of February 22, 1855, (10 Stat. 1165) between the United States of America and the Mississippi, Pillager and Winnibigoshish bands of Chippewa Indians. The treaty is attached as Appendix J to this Petition.

3. Public Law 83-280, 67 Stat. 583, 18 U.S. C.A. §§ 1162 and 28 U.S.C.A. § 1360 provides:

§§ 1162. State jurisdiction over offenses committed by or against Indians in Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended
California. . . .	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation

Wisconsin . . . . . All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal peroperty, including water rights belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty agreement or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

§ 1360. State Civil Jurisdiction in Actions to Which Indians Are Parties

(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the Territory.
California.	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation

Nebraska . . . . . .All Indian country within the State

Oregon . . . . . .All Indian country within the State, except the Warm Springs Reservation

Wisconsin . . . . . .All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

4. The Buck Act, 61 Stat. 641, amended August 1, 1956, C. 827, 70 Stat. 799, 4 U.S.C.A. §§ 104-110 provides:

§ 104. Tax on motor fuel sold on military or other reservation reports to state taxing authority

(a) All taxes levied by any State, Territory, or the District of Columbia upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels may be levied, in the same manner and to the same extent, with respect to such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. Such taxes, so levied, shall be paid to the proper taxing authorities of the State, Territory, or the District of Columbia, within whose borders the reservation affected may be located.

(b) The officer in charge of such reservation shall, on or before the fifteenth day of each month, submit a written statement to the proper taxing authorities of the State, Territory, or the District of Columbia within whose borders the reservation is located, showing the amount of such motor fuel with respect to which taxes are payable under subsection (a) for the preceding month.

(c) As used in this section, the term "Territory" shall include Guam. July 30, 1947, c. 389, §§ 1, 61 Stat. 641, amended Aug. 1, 1956, c. 827, 70 Stat. 799.

§ 105. State, and so forth, taxation affecting federal areas; sales or use tax

(a) No person shall be relieved from liability for payment of, collection of,or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same

effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to sales or purchases made, receipts from sales received, or storage or use occurring, after December 31, 1940. July 30, 1947, c. 389, § 1,61 Stat. 641

§ 106. Same; income tax

(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940. July 30, 1947, c. 339. § 1,61 Stat. 641.

§ 107. Same; exception of United States, its instrumentalities, and authorized purchases therefrom

(a) The provisions of sections 105 and 106 of this title shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.

(b) A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary unincorporated organizations of personnel of any branch of the Armed Forces of the United States, under regulations promulgated by the departmental Secretary having jurisdiction over such branch. July 30, 1947, c. 389, §1,61 Stat. 641, amended Sept. 3, 1954, c. 1263, § 4, 68 Stat. 1227.

§ 108. Same; jurisdiction of United States over Federal areas unaffected

The provisions of sections 105 to 110 of this title shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area. July 30, 1947, c. 389, §1,61 Stat. 641.

§ 109. Same; exception of Indians

Nothing in sections 105 and 106 of this title shall be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed. July 30, 1947, c. 389, § 1,61 Stat. 641.

§ 110. Same; definitions

As used in sections 105-109 of this title-

(a) The term "person" shall have the meaning assigned to it in section 3797 of title 26.

(b) The term "sales or use tax" means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 104 of this title are applicable.

(c) The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

(d) The term "State" includes any Territory or possession of the United States.

(e) The term "Federal area" means any land or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State.

July 30, 1947, c. 389, § 1,61 Stat. 641.

STATEMENT OF THE CASE

The facts in this case have been stipulated to and are not in dispute. Russell Bryan is an enrolled member of the Minnesota Chippewa Tribe.[1] Russell Bryan lives with his wife and family in a mobile home which is located on property held by the United States of America in trust for the Chippewa Tribe of Minnesota on the Leech Lake Indian Reservation.[2] Land so held by the United States government is commonly known as "tribal trust land"[3]

During October, 1971, Russell Bryan had his mobile home placed on the above-referenced property (at Squaw Lake, Minnesota). This mobile home is connected to sewer, water and electricity. In June, 1972, he received notice from the Itasca County

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[1] The Minnesota Chippewa Tribe is organized and recognized as an Indian Tribe by the United States of America pursuant to the Act of June 18, 1934 (48 Stat. 988) as amended. It operates under a Federal Charter of Incorporation dated September 17, 1934, issued by Oscar L. Chapman, then Secretary of the Interior, and ratified by the Tribe on November 13, 1937. In addition to that Charter, the Tribe operates under a Revised Constitution and By-Laws (as amended approved by the Secretary of the Interior on March 3, 1964).

[2] The Leech Lake Indian Reservation lies in North central Minnesota and consists of 588;684 acres of land occupying portions of Itasca, Cass, Beltrami and Hubbard Counties. The Reservation was created by Treaty in 1855 (10 Stat. 1165) and continued under modifying provisions of subsequent treaties and executive orders. Eighty percent of the land on the Reservation is now owned by county, state and federal governments with the Chippewa National Forest occupying the largest portion of the land. The land, generally swampy and unsuitable for agriculture, includes many lakes, including Cass, Leech and Winnibigoshish. According to the 1970 census, 2795 members of the the Leech Lake Band live within or adjacent to the Reservation. See Leech Lake Band of Chippewa Indians vs Herbst, 334 F. Supp. 1001(D. Minn. 1971).

[3] Land held in trust for the Indians by the U.S. Government essentially means that the Tribe as a whole has the right to use the land without the power to sell it. See generally Felix S. Cohen Handbook of Federal Indian Law, University of New Mexico Press, (1958), Ch. 15.

Auditor that, pursuant to Minn. Stat. 168.012 (8), as amended by Laws 1961, Ch. 340, he had been assessed a tax liability for two months of 1971, amounting to $29.85 for his mobile home. On June 20, 1972, Bryan was notified by the Itasca County Treasurer that a tax of $118.10 had been assessed on his trailer for 1972.

On September 11, 1972, an action was commenced by Russell Bryan and all other similarly situated against Itasca County and the State of Minnesota seeking a declaratory judgment declaring the levying of such taxes illegal and enjoining defendants from levying said taxes.

The case was heard by Judge James F. Murphy on March 15, 1973. On July 27, 1973, the Court ordered the State of Minnesota dismissed from the law suit. On December 8, 1973, the Court entered its Judgment and Decree awarding a judgment against the plaintiff in the amount of $147.95. On February 13, 1974, the appellant filed his notice of appeal with the Minnesota Supreme Court.

On January 7, 1975, the Minnesota Supreme Court, sitting en banc, heard oral arguments on the

case. On March 28, 1975 The Minnesota Supreme Court issued its opinion and on April 10, 1975 judgment was entered.

The question of whether Public Law 83-280 permitted Itasca County to tax the mobile home of Russell Bryan was first raised by petitioner in his complaint. As there were no disputed facts, the case was submitted to the Court on stipulated facts, briefs and oral arguments. The district court ruled that Public Law 280 gave Minnesota the power to tax. On appeal, the Minnesota Supreme Court affirmed.

REASONS FOR GRANTING THE WRIT

A. The decision by the Minnesota Supreme Court is incorrect as it permits the State of Minnesota to tax reservation Indians without an express authorization by Congress and thereby violates Chippewa Treaty Rights, is contrary to longstanding Congressional policies as well as decisions by this Court, and erodes tribal sovereignty.

1. Chippewa Treaty Rights

Minnesota;s taxation of Russell Bryan violates Chippewa Treaty Rights. The treaty creating the Leech Lake Indian Reservation (reproduced in Appendix J) does not grant the State of Minnesota the power to tax the Chippewas. Instead, the treaty is silent with respect to taxation. In interpreting Indian treaties such as this, the Court has adopted the general rule that "doubtful expressions are to be resolved in favor of the weak and defenseless people," Carpenter v. Shaw, 280 U.S. 363 (1930), and has held in similar cases that absent specific Congressional authorization, states have no power to tax reservation Indians. Warren Trading Post Co. v. Arizona Tax Commission, 380 U.S. 685 (1965).

2. Federal Indian Policy

This Court has long taken the position that the states have no power over reservation Indians other than that which Congress specifically grants them. Williams v. Lee, 358 U.S. 217 (1959). With respect to taxation, reservation Indians have been immune from state taxes. McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973). As late as 1947, Congress jealously guarded the immunity of reservation Indians from taxation through passage of the Buck Act,[4] which this Court has noted is "explicable only if Congress assumed that the states lacked the power to impose the taxes without special authorization" McClanahan, supra, at 177.

Public Law 280 contains no specific authorization granting states the power to tax reservation Indians. In spite of this, the Minnesota Supreme Court, as well as the Eighth Circuit Court of Appeals in Omaha Tribe of Indians et al v. Peters ___F.2d___(May 9, 1975), have ruled that in 1953, just 6 years after carefully preserveing the immunity of reservation Indians from taxation, Congress swept all this aside by Public Law 280 even though there is no specific authorization to tax in the act.

[4]The Buck Act, now 4 U.S.C. §§104-110 (1964ed), permitted states to levy sales or use taxes within certain federal areas. §§109 exempts "Indians not otherwise taxed." This has been interpreted to exclude reservation Indians. Warren Trading Post v. Arizona State Tax Commission, 380 U.S. 685,692 (1965).

The holding of the Minnesota Supreme Court is, in effect, a repeal by implication of the long-standing tax immunity of reservation Indians.

Regarding repeals by implication, this Court has stated:

> "Appellees encounter head-on the cardinal rule...that repeals by implication are not favored...." Morton v. Mancari, 417 U.S. 535 at 549 (1974).

Even though there is no statutory tax exemption for reservation Indians, it is a right based on treaties and sovereign immunity. In cases concerning the extinguishment of Indian rights, the Court has adopted a rule as strict as that for repealing statutes. To effectively extinguish Indian rights, Congress must do so "expressly" in "unequivocal terms" or make its intent clear in the legislative history. Mattz v. Arnett, 412 U.S. 481, 504 (1973)

The Minnesota Supreme Court ruled that Public Law 280 gave the states the power to tax even though there is not one word of Congressional history indicating that this was the intent of Congress. In fact, the legislative history available indicates that Public Law 280 was a law and order statute which was designed to shift the responsibility for

for adjudicating criminal and civil disputes involving Indians from undermanned tribal courts to state courts. Indeed, the House Report on H.R. 1063, which became Public Law 280, speaks of the bill as part of a series of measures withdrawing federal responsibility for Indians, but makes it clear that Public Law 280 itself is a more modest solution to a more specific problem; ie, the inadequacy of law enforcement and the adjudication of civil conflicts in some areas of Indian country.[5] This Court's previous references to Public Law 280 supports this view. In Kennerly v. District Court of Montana, 400 U.S. 423 (1971), the Court referred to Public Law 280 as an "extension of state jurisdiction over civil causes of action by or against Indians arising in Indian country " and refers to the 1968 amendments (which require the consent of the Indian tribes affected before a state can assume any jurisdication under Public Law 280) as "a new regulatory scheme

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[5] H. Rep. No. 848, 83rd Cong., 1st Sess., p. 3; S. Rep. No. 699, 83rd No. 699, 83rd Cong., 1st Sess., p. 3

for the extension of state civil and criminal jurisdiction to litigation involving Indians arising in Indian country. (400 U.S. at 427-28). Similarly, in Warren Trading Post v. Arizona State Tax Commission, 380 U.S. 658 (1965), the Court referred to Public Law 280 in footnote 3 as:

> "Respectively granting certain states criminal and civil jurisdiction over causes of action involving Indians within specified reservations." 380 U.S. at 687

B. Whether or not Public Law 280 conferred taxing power to the states is an important question of law having a substantial impact on tribal sovereignty, individual Indians, and the relations between Indians and the states.

1. The only difference between the present case and McClanahan, supra, is that here Minnesota has been granted limited civil and criminal jurisdiction pursuant to Public Law 280. In McClanahan, supra, this Court ruled that the State of Arizona had no power to tax the income of Navajos on the Navajo reservation. In footnote 18 of the opinion, this Court specifically reserved ruling on whether Arizona could have levied the tax had Public Law 280 applied, stating:

> "We do not suggest that Arizona would necessarily be empowered to impose this tax had it followed the procedures outlined in 25 USC §§ 1322 et seq. cf. 25 USC § 1322 (b). That question is not presently before us, and we express no views on it." 411 U.S. at 178.

2. This Court first acknowledged the existence of tribal sovereignty in 1832 in Worcester v. Georgia, 6 Pet. 515. Most recently, in United States v. Mazurie, 419 U.S. 544,42 L. ed. 2d 706 (1975) the Court noted that "Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory" 42 L.ed. 2d at 716. The sovereignty of the Indian Tribes has been held to give them "a status higher than that of states" Native American Church of North America v. Navajo Tribal Council, 272 F. 2d 131, 134 (10th Cir. 1959).

Since the power to tax is an attribute of sovereignty "essential to the very existence of government" McCulloch v. Maryland, 4 Wheat. 316 428 (1819), it follows that an Indian tribe possessing the powers of self-government has the inherent power to levy taxes. Buster v. Wright, 135 Fed. 947 (8th Cir. 1905), appeal dismissed, 203 U.S. 599 (1906); Morris v. Hitchcock, 21 App. D.C. 565 (1903),

affirmed 194 U.S. 384 (1904); Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89 (8th Cir. 1956).

In order to grow and progress, Indian tribes need revenue for tribal government, housing and economic development. The intrusion of the state into the Indian taxing sphere would make it more difficult for a tribe to levy its own taxes to secure needed revenue to carry on tribal functions. Thus, an important element of tribal sovereignty is being imperiled by Minnesota's levy of taxes on the Leech Lake Indians.

3. As this Court has not determined the scope of Public Law 280, the states are imposing their taxes on reservation Indians. The range of taxes includes:

a. Income Taxes (both personal & business)

b. Personal property taxes

c. Sales taxes

d. Real Estate taxes (on non-trust or alloted land)

e. Use taxes

f. Excise taxes

g. Gift & inheritance taxes

h. Employee taxes

i. Workmen's compensation taxes

j. License & privilege taxes

The imposition of these taxes on reservation Indians, the great bulk of whom live in grinding poverty, is having a devastating economic impact. As many Indians on the Leech Lake Reservation still hunt and fish for their sustenance, Leech Lake Band of Chippewa Indians v. Herbst, 334, F. Supp. 101 (1971), the imposition of state taxes is depleting the limited resources of these Indians. Thus, when an Indian wishes to use his canoe to rice or fish, a license must be purchased from the state; or when beads are purchased to be used to make Indian beadwork jewelery, or tools are purchased to cut pipestone to fashion peacepipes and other artifacts for tribal ceremonies, a state tax is imposed; when a net is purchased for fishing, or a gun or ammunition purchased for hunting, a state tax is imposed; or when spigots or pails are purchased for maple sugaring, a state tax is imposed. Such taxes make it extremely difficult for Indians to continue to hunt and fish for their sustenance and to retain their Indian culture and heritage. The mobile home tax (personal property tax) in the instant

case is also discouraging reservation Indians, such as Russell Bryan, from living on the very land which was set aside by the 1855 Treaty with the Chippewas (art. II) "for the permanent homes of the (Chippewa) Indians" (emphasis added). In effect, the most basic Indian policy of all - allowing the Indians to reside on their reservations-is being subverted by the imposition of comprehensive state taxation not expressly authorized or sanctioned by Congress.

Since this Court's decision in McClanahan, supra, a number of states, in addition to Minnesota, which are covered by Public Law 280, have begun taxing their reservation Indians. The imposition of state taxes has been challenged by the Indians in a number of states, including Nebraska's taxation of the income of reservation Indians (See Omaha Tribe of Indians, et al v. Peters, ___ F.2d ____, No. 74-1868, 8th Cir., May 9, 1975); Wisconsin's taxation of the income of reservation Indians (see Wildcat et al v. Adamany et al, No. 74-C-226, currently pending before U.S. District Court for the Western District of Wisconsin and Washington's imposition of excise, use, and sales taxes on Washington state reservations (see Quileute Indian Tribes et al, v. State of Washington, No. Civ. 74-7619, currently pending before the United States District Court for the Western District of Washington). This litigation challenging the taxing power of the states under Public Law 280 has absorbed much of the limited financial resources of the Indian tribes as well as their energies. To conserve the resources of the Indian tribes and individual Indians, it is important that this Court render a decision concerning this issue.

4. The question of whether Public Law 280 granted the states the power to impose their taxes on reservation Indians is an important question of law affecting:

a.) All those Indians on reservations in the states included originally under Public Law 280 (Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin, except the Red Lake Reservation in Minnesota and the Warm Springs Reservation in Oregon), covering a total of over 65 reservations or rancherias with an estimated

population of 118,250 Indians.[6]

b.) Those Indians in states which subsequently chose to be covered by Public Law 280. These states are: Florida, Iowa, Nevada, North Carolina, and Washington (on selected reservations). This brought 14 more reservations with an Indian population of approximately 27,000 under Public Law 280.[7]

c.) The remaining states and reservations in the United States which may choose to be covered by Public Law 280 in the future.[8] This includes the remainder of the Indian reservations in the United States, affecting Indians in another 12 states with a total population of approximately 112,000 Indians.[9] In order for states and Indian tribes to make an intelligent decision as to whether or not they should choose to be covered by Public Law 280, it is necessary that they know the exact scope of Public Law 280.

It is therefore extremely important to the entire Indian population in the United States, and not just those Indians in current Public Law 280 jurisdictions, that this Court now answer the precise question which it left open in McClanahan, supra, ie, whether Public Law 280 conferred taxing power to the states over reservation Indians.

5. The issue which Bryan v. Itasca County brings to this Court is one which lower courts across the United States are currently struggling with. It is an issue which this Court has not previously decided. As the question effects the heart of the Indian tribes very existence, their sovereignty, it is an emotionally charged issue which is causing a considerable amount of friction between the Indian tribes and the States. It is forcing every Indian in a Public Law 280

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[6] See Department of the Interior, Bureau of Indian Affiars, Estimates of Resident Indian Population and Labor Force Status; By State and Reservation: March 1973.

[7] Ibid.

[8] Prior to 1968, under the original provisions of Public Law 280, no consent of the tribes affected was necessary before a state could assume jurisdiction under Section 7 of the 1953 Act. However, Title IV of the Civil Rights Act required that:

> "State jurisdiction. . . shall be applicable . . only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians."

§403(b) of the Civil Rights Act of 1968, 82 Stat. 79, 25 U.S.C. §1323(b) (1964ed., supp

[9] Department of Interior, Estimates, supra.

jurisdiction to make a decision with every purchase made, with every tax statement received and with every tax return submitted, as to whether or not he should refuse to pay the tax and risk prosecution by the State. To stop this judicial battle and put an end to the growing friction between the Indian tribes and the States over this issue, it is imperative that this Court provide the sought after answer.

CONCLUSION

For these reasons, we respectfully submit that the petition for the writ of certiorari should be granted.

Respectfully submitted,

July 3, 1975

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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-5027

RUSSELL BRYAN, Individually and on Behalf of All Other Persons Similarly Situated,
Petitioner,

—*v.*—

ITASCA COUNTY, MINNESOTA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

PETITION FOR CERTIORARI FILED JULY 7, 1975
CERTIORARI GRANTED NOVEMBER 3, 1975

Supreme Court of the United States

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IN THE DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA

COUNTY OF ITASCA

RUSSELL BRYAN, individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

ITASCA COUNTY, MINNESOTA; and the STATE OF MINNESOTA by its Commissioner of Taxation, ART ROEMER, DEFENDANTS

COMPLAINT

The Plaintiffs, for their cause of action against defendants, state allege:

1. That the Plaintiff Russell Bryan is an adult person, an enrolled member of the Minnesota Chippewa Tribe, and residing within that portion of the Leech Lake Indian Reservation lying in Itasca County, Minnesota.
2. That Itasca County is a municipal subdivision of the State of Minnesota asserting and exercising both criminal and civil authority within its boundaries; and more particularly assessing, levying upon, and collecting taxes from personal property within its boundaries.
3. That the function of assessment and collection of personal property taxes is under color of State Law enacted by the Legislature of the State of Minnesota, administered and supervised through the Commissioner of Taxation for the State, Art Roemer.
4. That in the month of October 1971, the Plaintiff Russell Bryan purchased a 1972 Skyline Mobile Home, which was placed upon a tract of land in Squaw Lake, Itasca County, and used by him as the permanent and continuous residence of himself, his wife and children.

5. That he occupies a parcel of land for this purpose under a lease or permit, and by reason of his enrollment as a member of the Chippewa Tribe, according to the official membership rolls maintained by the Bureau of Indian Affairs of the Department of Interior.

6. That the parcel of land occupied by him and upon which his mobile home is located is within Sec. 17, 18, Township 148 North, Range 27 West of the 5th Principal Meridian, and the fee title of which is vested in the United States of America in Trust for the Minnesota Chippewa Tribe.

7. That in June 1972 he was notified by the County Auditor of Itasca County that pursuant to the provisions of Minnesota Statutes 168.012, Subd. 8, as amended by Laws 1961, Chap. 340, his mobile home has been assessed for 2 months of 1971 for a tax liability of $29.85, which would become due and payable 30 days after that notice to him.

8. That on or about the 20th day of July, 1972 he received a Personal Property Tax statement issued by the County Treasurer of Itasca County indicating a tax liability on the mobile home for the year 1972 of $118.10.

9. That in actuality the County of Itasca and State of Minnesota have no lawful authority to assess or impose a tax upon his personal property, and that any enactment of the State Legislature or rule of the Tax Commissioner, or exercise of purported authority in furtherance thereto is contrary to the provisions of the United States Constitution, Article I. Sec. 8, Chap. 2, and is an inference with an instrumentality of the United States Federal Government, in that the property of tribal Indians living within reservation and upon tribal or United States land, in furtherance of the general policies and objectives of the United States, are exempt from State or Local taxation.

10. That Russell Bryan belongs to a class of people similarly situated with the same incidents of being tribal Indians, living on tribal land within a Federal Indian Reservation, but that their numbers are too great to identify precisely.

11. That there exists between plaintiffs and defendants a justifiable controversy which ought to be determined to establish the relative rights and duties of the parties.

WHEREFORE, Plaintiff prays that the court enter its judgment declaring that the defendants have no authority to assess, levy upon, or collect personal property taxes from persons within their classification, and enjoining the same defendants from any and all acts now or in the future which would accomplish those same ends.

Dated: September 11, 1972

/s/ Patrick J. Moriarty
PATRICK J. MORIARTY
Attorney for Plaintiffs
Leech Lake Reservation
Legal Services Project
Box 425
Cass Lake, Minnesota
(218) 335-2223

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA

COUNTY OF ITASCA

RUSSELL BRYAN, individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

ITASCA COUNTY, MINNESOTA; and the STATE OF MINNESOTA by its Commissioner of Taxation, ART ROEMER, DEFENDANTS

ANSWER OF ITASCA COUNTY

Now comes the Defendants, County of Itasca and for its Answer states and alleges:

1. Denies each and every allegation set forth of the complaint herein except as hereinafter admitted.

2. Admits the allegations of the complaint as set forth in Paragraphs 2, 3, 8, and 11.

3. Alleges that it has no knowledge as to the allegations set forth in Paragraphs 1, 4, 5, 6, 7, and 10, thereby putting the Plaintiff to the strict proof thereof.

4. Specifically denies Paragraph 9 of the Complaint and specifically alleges that the County of Itasca is empowered to assess and collect taxes on all property of the kind set forth in the Complaint located within the County of Itasca.

WHEREFORE, Defendants, County of Itasca prays the Court to dismiss the Plaintiff's pretended cause of action.

/s/ W. J. Spooner
W. J. SPOONER
Itasca County Attorney
Court House
Grand Rapids, Minnesota

DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA

COUNTY OF ITASCA

RUSSELL BRYAN, individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

ITASCA COUNTY, MINNESOTA; and the STATE OF MINNESOTA by its Commissioner of Taxation, ART ROEMER, DEFENDANTS

ANSWER OF STATE OF MINNESOTA

The defendant State of Minnesota by its Commissioner of Taxation, Arthur C. Roemer, for its separate Answer to the Complaint of the plaintiff herein:

AS A FIRST DEFENSE

I.

Alleges that he is without knowledge or information sufficient to form a belief as to the truth of any or all of the allegations contained in paragraphs 1, 4, 5, 6, 7, and 8.

II.

Admits that Itasca County is a political subdivision of the State of Minnesota and that both the State of Minnesota and its political subdivisions exercise, an attribute of sovereignty, civil and criminal jurisdiction over persons and property within their boundaries, but denies the remainder of paragraph 2.

III.

Admits that the assessment, levy, and collection of personal property taxes is carried out in accordance

with applicable laws, including the Minnesota Statutes enacted by the Minnesota Legislature, but denies the remainder of paragraph 3.

IV.

Except as hereinbefore admitted, qualified, or otherwise answered, defendant denies each and every allegation in said Complaint contained.

AS A SECOND DEFENSE

I.

Alleges that plaintiffs' Complaint fails to state a claim against the defendant State of Minnesota upon which relief can be granted.

AS A THIRD DEFENSE

I.

Alleges that the Court lacks jurisdiction over the subject matter of the plaintiff's Complaint since plaintiff has not complied with the provisions of Minn. Stat., Chap. 277.

AS A FOURTH DEFENSE

I.

Alleges that the Court may not render or enter a declaratory judgment or decree in this case since such a judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to these proceedings.

AS A FIFTH DEFENSE

I.

Alleges that the Court may not grant the relief requested by plaintiff since plaintiff has an adequate remedy at law under Minn. Stat., Chap. 277, and since injunction will not lie to restrain the collection of a

personal property tax, enforceable under the general tax laws, on the sole ground that it is illegal, *Wall* v. *Borgen*, 152 Minn. 106, 188 N.W. 159 (1922), even though many taxpayers may be similarly situated and a single action would establish a precedent and settle a question as to all. *Bradish* v. *Lucken*, 38 Minn. 186, 36 N.W. 454 (1888).

AS A SIXTH DEFENSE

I.

Alleges that the present action can not be maintained as a class action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure since the requirements of Rule 23.01 and 23.02 have not been and can not be met.

WHEREFORE, the defendant prays that the Court enter its judgment dismissing plaintiff's claim as set forth in its Complaint filed herein, and awarding the defendant State of Minnesota its costs and disbursements.

STATE OF MINNESOTA
Warren Spannaus
Attorney General

/s/ Ronald S. London
RONALD S. LONDON
Special Assistant
Attorney General
Centennial Office Building
St. Paul, Minnesota 55145

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA

COUNTY OF ITASCA

RUSSELL BRYAN, ET AL., PLAINTIFF

vs.

ITASCA COUNTY, ET AL., DEFENDANTS

STIPULATION OF FACTS

The undersigned attorneys representing the various parties in this action believe that the stipulation of facts in this case will promote the orderly trial and determination of issue; that there are no substantial disputes as to facts, and that formal establishment of the factual basis would not aid the court in consideration of the ultimate issues.

It Is Therefore Stipulated And Agreed, that the following facts may be accepted by the Court as true for the purposes of determination of issue herein.

1. Russell Bryan is an adult person, enrolled as a member of the Minnesota Chippewa Tribe on its official rolls; and is an "Indian" person as defined by the United States Statute.

2. That Russell Bryan lives, with his wife and family, in a 1972 Skyline Mobile home owned by him, which is his permanent and continuous residence. That the Mobile home has regular permanent connections for water, sewer and electric service.

3. That his mobile home residence is situated upon a parcel of ground within Sec. 17 or 18, Township 148 North, Range 27 West of the 5th Principal Meridian; and that the fee title to said parcel is held by the United States of America in Trust for the Chippewa Tribe of Minnesota; a condition of ownership which is usually

referred to as "Tribal Trust Land", and is within the exterior boundaries of the Greater Leech Lake Indian Reservation.

4. That Russell Bryan purchased the mobile home in about October 1971, and has had it situated on the above parcel of land since that time.

5. That in June 1972 he received a notice from Orten Hepola, Auditor of Itasca County that pursuant to the provisions of Minn. Stats. 168.012, Subd. 8, as amended by Laws 1961, Chap. 340, he had been assessed a tax liability on his mobile home for 2 months of 1971, amounting to $29.85, which became payable 30 days after the date of the notice to him.

6. That on or about July 20, 1972 he received a Personal Property Tax Statement from Robert Loscheider, Treasurer of Itasca County indicating a tax liability against him upon the value of the mobile home for the year 1972, amounting to the gross figure of $118.10.

7. That the tax involved is upon the personal property described as 2A in Minn. 272. 13, Subd. 3; imposed by authority of M.S. 272.01, Subd. 1; and, that Itasca County has not exercised its option under M.S. 272.61 to exempt from Taxation Class 2 property as described in M.S. 272.13.

8. That the Minnesota Chippewa Tribe is organized and recognized as an Indian Tribe by the United States of America pursuant to the Act of June 18, 1934 (48 U.S. Stats. 984) as amended; under a Federal Charter of incorporation dated September 17, 1937 issued by Oscar L. Chapman, then Secretary of the Interior, and ratified by the Tribe on November 13, 1937. That in addition to that Charter, the Tribe operates under a Revised Constitution and By-Laws, (as amended) approved by the then Secretary of the Interior of the U.S. Government on March 3, 1964.

In Witness Whereof the undersigned parties have signed this 15th day of March, 1973.

For Plaintiff, Russell Bryan

/s/ Patrick J. Moriaty
Leech Lake Legal
Services

For Defendant, Itasca County

/s/ W. J. Spooner
W. J. SPOONER
County Attorney

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA

COUNTY OF ITASCA

RUSSELL BRYAN, individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

ITASCA COUNTY, MINNESOTA, and the STATE OF MINNESOTA, by its Commissioner of Taxation, ART ROEMER, DEFENDANTS

ORDER DISMISSING STATE OF MINNESOTA

On motion of the plaintiff herein,

IT IS ORDERED that the above-entitled matter be and the same is herewith dismissed as against the state of Minnesota by its Commissioner of Taxation, Art Roemer, as a party defendant.

Dated this 27th day of July, 1973.

BY THE COURT:

/s/ James F. Murphy
JAMES F. MURPHY
Judge of District Court

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA

COUNTY OF ITASCA

RUSSELL BRYAN, individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

ITASCA COUNTY, MINNESOTA, and the STATE OF MINNESOTA, by its Commissioner of Taxation, ART ROEMER, DEFENDANTS

JUDGMENT AND DECREE

The above entitled matter came on to be heard before the Honorable James F. Murphy, District Court Judge, in and Court house in the City of Grand Rapids, County of Itasca, State of Minnesota, on the 15th day of March, 1973, on a Stipulation of Facts as hereinafter set forth. Mr. William J. Spooner, Itasca County Attorney, appeared in behalf of the defendants; and Mr. Patrick J. Moriarty of Legal Services Project, Cass Lake, Minnesota appeared in behalf of the plaintiff. Mr. Moriarty, however, was subsequently replaced, and substituted in his place was a Mr. Nicholas M. Norden of Legal Services Project, Cass Lake, Minnesota.

The Court having reviewed the file, briefs, and being fully advised in the premises, and having made and filed its Findings of Fact, Conclusions of Law, and Order for Judgment.

PURSUANT TO SAID Findings of Fact, Conclusions of Law and Order for Judgment:

IT IS HEREBY ADJUDGED AND DECREED:

1. That the defendants are awarded a judgment against the Plaintiff, Russell Bryan, in the sum of $147.95, together with interest, costs, and disbursements.

Witnesseth, the Honorable James F. Murphy, District Court Judge, at Grand Rapids, Minnesota, this 8th day of December, 1973.

TYRUS L. BISCHOFF
Clerk of District Court

By: /s/ Ursula R. Peterson
Deputy

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA

COUNTY OF ITASCA

RUSSELL BRYAN, individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

ITASCA COUNTY, MINNESOTA, and the STATE OF MINNESOTA, by its Commissioner of Taxation, ART ROEMER, DEFENDANTS

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

The above-entitled matter came on to be heard before the undersigned, one of the judges of the above named District Court, in the court house in the City of Grand Rapids, County of Itasca, State of Minnesota, on the 15th day of March, 1973, on a Stipulation of Facts as hereinafter set forth. Mr. William J. Spooner, Itasca County Attorney, appeared in behalf of the defendants; and Mr. Patrick J. Moriarty of Legal Services Project, Cass Lake Minnesota appeared in behalf of the plaintiff. Mr. Moriarty however, was subsequently replaced, and substituted in his place was a Mr. Nicholas M. Norden of Legal Services Project, Cass Lake, Minnesota.

The Court having reviewed the file, briefs having been filed herein—the last brief having been filed on or about August 27, 1973—and the Court being fully advised in the premises, now makes the following:

FINDING OF FACT

1. That Russell Bryan is an adult person, enrolled as a member of the Minnesota Chippewa Tribe on its official rolls; and is an "Indian" person as defined by the United States statute.

2. That Russell Bryan lives, with his wife, and family, in a 1972 Skyline mobile home owned by him, which is his permanent and continuous residence. That the mobile home has regular permanent connections for water, sewer, and electric service.

3. That his mobile home residence is situated upon a parcel of ground within Sec. 17 or 18, Township 148 North, Range 27 West of the 5th Principal Meridian; and that the fee title to said parcel is held by the United States of America in Trust for the Chippewa Tribe of Minnesota; a condition of ownership which is usually referred to as "Tribal Trust Land", and is within the exterior boundaries of the Greater Leech Lake Indian Reservation.

4. That Russell Bryan purchased the mobile home in about October, 1971, and has had it situated on the above parcel of land since that time.

5. That in June, 1972, he received a notice from Orten Hepola, Auditor of Itasca County, that pursuant to the provisions of Minn. Statutes 168.012, Subd. 8, as amended by Laws 1961, Chapter 340, he had been assessed a tax liability on his mobile home for two months of 1971, amounting to $29.85, which became payable 30 days after the date of the notice to him.

6. That on or about July 20, 1972, he received a Personal Property Tax Statement from Robert Loscheider, Treasurer of Itasca County, indicating a tax liability against him upon the value of the mobile home for the year 1972, amounting to the gross figure of $118.10.

7. That the tax involved is upon the personal property described as Class 2A in Minn. Statutes 272.13, Subd. 3; imposed by authority of M.S. 272.01, Subd. 1: and that Itasca County has not exercised its option under M.S. 272.61 to exempt from taxation Class 2 property as described in M.S. 272.13.

8. That the Minnesota Chippewa Tribe is organized and recognized as an Indian Tribe the United States of America pursuant to the Act of June 18, 1934 (48 U.S. Stats. 984) as amended: under a Federal Chapter of incorporation dated September 17, 1937, issued by Oscar

L. Chapman, then Secretary of the Interior, and ratified by the Tribe on November 13, 1937. That in addition to that Charter, the Tribe operates under a Revised Constitution and By-Laws, (as amended) approved by the then Secretary of the Interior of the U.S. Government on March 3, 1964.

9. That there is no claim that the 1972 Skyline mobile home is any part of the real estate, but is personal property.

AND from the foregoing, the Court makes the following:

CONCLUSIONS OF LAW

1. That the defendants are entitled to judgment against the plaintiff, Russell Bryan, in the sum of $147.95 together with interests, costs and disbursements herein.

LET JUDGMENT BE ENTERED ACCORDINGLY 30 days from the date hereof.

Dated at Grand Rapids, Minnesota, this 8th day of November, 1973.

BY THE COURT

James F. Murphy
Judge of District Court

MEMORANDUM

The sole question before the Court as under the circumstances herein stipulated is: Can Russell Bryan be taxed for his personal property? The answer is yes. The Court must first distinguish between real estate taxes and personal property taxes. The difference between the two is that in personal property the taxes are enforced in personam, although assessed and imposed because of property ownership. Real estate taxes are assessed and enforced against the land itself.

The Court has reviewed the briefs of both parties in detail, and has read practically all of the citations cited therein, and the Court does adopt and there will be attached hereto a portion of the brief of the Commissioner of Taxation.

It must be remembered that the Leech Lake Indians were part of large Indian tribe, that once upon a time they were an Indian sovereign nation. There is no doubt that their claim to sovereignty long predates that of our own government. However, today that situation has changed because of treaties and laws to which they have permitted themselves to be governed. The Indians on the Leech Lake Reservation are today American citizens, residents of Minnesota. They have the right to vote, to use state courts, to use county courts, to serve on juries, and to have their civil and criminal matters determined in a manner the same as any other Minnesota resident. They likewise receive state and county services, such as police protection, equal rights, and right to serve in any political office, be it state, county, or city within or without the boundaries of the reservation.

The Leech Lake Reservation must be distinguished from Red Lake Reservation. The Red Lake Reservation is a closed reservation. The laws that apply to the Leech Lake Reservation do not apply to the Red Lake Reservation.

Exemptions from tax laws should, as a general rule, be clearly expressed. I am unable to find any expressed exemption by law, treaty or otherwise that would pre-

vent Itasca County from enforcing its personal property tax laws of the State of Minnesota against the person of the plaintiff or petitioner.

The plaintiff seems to rely upon the case of *McClanahan* v. *Arizona*, 36 L. ed. 2d, 129, decided March 27, 1973. However, it appears to the Court that the facts and the law are so different in the *McClanahan* case that the same is not applicable to the case now before the Court. For instance, Arizona does not come under USCA 1360. The *McClanahan* case further indicates that the Arizona reservation which is involved in that case is a closed reservation, while the Leech Lake Reservation is an open reservation. By Act of Congress, USCA 1360, the Indians, though Congress, gave to the State of Minnesota and its subsidiaries civil jurisdiction over the Leech Lake Reservation, except in certain instances which are not applicable to the stiuation here involved.

Because, as previously stated, there is a difference between the Leech Lake Reservation and the Red Lake Reservation, the Court quotes from the case of *Commissioner of Taxation* vs. *Brun*, 286 Minn. 43, p. 44; 174 NW 2d 120 (1970):

> "We have had occasion to consider the unique status of the Red Lake Band of Chippewa Indians in a number of cases. It is clear that members of this tribe occupy a status not common to *other* Indians in this state (underlining supplied by court). It would serve no useful purpose to discuss at length the unique status that this tribe enjoys or the reasons why the state cannot deal with them as it does with Indians in other parts of the state. It is enough to say that the Federal Government has not granted to the state civil or criminal jurisdiction over members of this tribe (Red Lake Tribe). As we have frequently said, when Congress enacted Public Law 280 (67 Stat. 588, 18 USCA § 1162, and 28 USCA § 1360) in 1953, which conferred on the state civil and criminal jurisdiction over other Indians in the state, it expressly excepted the Red Lake Reservation."

However, Leech Lake Indians living on the reservation do not enjoy such privileges as have been explained by them consenting to have the state assume jurisdiction over their civil and criminal rights.

The portion of the brief of the Commissioner of Taxation applicable to the situation here involved, being pages 2-20, is attached hereto and made a part hereof.

The Court throughout its deliberations on this matter has considered certifying this question to the Supreme Court; but after due deliberation it has determined that the defendants' claim of right to tax this personal property is sufficiently warranted by the laws of the State of Minnesota.

J. F. M.

ARGUMENT

I. ITASCA COUNTY MAY LEVY A NON-DISCRIMINATORY PERSONAL PROPERTY TAX AGAINST THE PERSONAL PROPERTY OWNED BY DEFENDANT WHO IS A CHIPPEWA INDIAN RESIDING ON THE LEECH LAKE RESERVATION.

The power to tax is inherent in sovereignty, In re *Petition of S.R.A., Inc.* 213 Minn. 487, 7 N.W. 2d 484 (1942), and the sovereignty of the State of Minnesota extends" * * * to all places within the boundaries . . . as defined in the constitution and, concurrently, to the waters forming a common boundary between this and adjoining states, subject only to such rights of jurisdiction as have been or shall be acquired by the United States over the places therein." Minn. Stat., Sec. 1.01. The M.S.A., Vol. 1, p. 169, also described the exterior geographic boundaries of the State of Minnesota without making any mention of or exception for Indian country within Minnesota; the enabling acts of certain other states (Arizona, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Washington), on the other hand, contain express disclaimers of state jurisdiction over Indian country within their states. This distinction in the various Enabling Acts is important since the United States Supreme Court has held that "Whenever, upon the admission of a State into the Union, Congress intended to except out of it an Indian reservation, or the sole and exclusive jurisdiction over that reservation, it has done so by express words."[1] *United States* v. *McBratney*, 104 U.S. (14 Otto) 621 (1881).

Furthermore, in 1953 Congress gave the State of Minnesota and its political subdivisions the right and power to tax Indians residing in the state by transferring full jurisdiction "over civil cases of action between Indians or to which Indians are parties." and providing that

[1] This statement was adopted by the Minnesota Supreme Court in *State* v. *Holthusen*, 261 Minn. 536, 113 N.W. 2d 180 (1962).

"those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory; * * *" (Emphasis added.) P.L. 83-280, 67 Stat. 588, 28 U.S.C.A., § 1360 (1953). The only Indian country excepted from this broad grant of civil jurisdiction to the State of Minnesota was the Red Lake Reservation.

Lastly, but certainly not least important, the Minnesota Constitution, Art. XV, Sec., specifically provides that:

> Persons residing on Indian lands within the State shall enjoy all rights and privileges of citizens,[2] as though they lived in any other portion of the state, *and shall be subject to taxation.* (Emphasis added.)

This provision of the present Minnesota Constitution was one of the original provisions included in the constitution drafted in response to Congress's passage of the Minnesota Enabling Act, which authorized the inhabitants of the territory of Minnesota to form a constitution and a state government. This constitution was debated by Congress during its deliverations on the question whether or not to admit Minnesota into the Union. *History of the Minnesota Constitution*, William Anderson (Univ. of Minn., 1921), pp. 130-131, 136-141. Congress eventually admitted Minnesota into the Union with the constitution, including Art. XV, Sec. 2, intact, Ibid., pp. 137-138. If Art. XV, Sec. 2, was contrary to Congressional policy, the Congress would have required Minnesota to change or delete this provision before voting affirmatively to accept Minnesota into the Union.

The sovereignty doctrine, P.L. 83-280 granting the State of Minnesota plenary civil and criminal jurisdic-

[2] Indians, who had not been previously accorded citizens status were declared to be citizens of the United States by Congressional Act on June 2, 1924. 43 Stat. 253, now codified at 8 U.S.C., § 140 (a)(2). As citizens of the United States, Indians are citizens of the State where they live. United States Con., Amend. 14, Sec. 1. See also Minn. Constitution Art. VII, Sec. 1.

tion over all Indian country except the Red Lake Reservation, and Minn. Constitution, Art. XV, Sec. 2, leave no room for doubt that the State of Minnesota and its political subdivisions have the right and the powers to tax the defendant's personal property located within their boundaries unless the defendant can affirmatively show that the State of Minnesota and its political subdivisions are prohibited from taxing such property by an Act of Congress or the United States Constitution.

II. ITASCA COUNTY IS NOT PROHIBITED FROM LEVYING A NON-DISCRIMINATORY PERSONAL PROPERTY TAX AGAINST THE PERSONAL PROPERTY OWNED BY THE DEFENDANT.

Defendant argues that Itasca County may not levy even a non-discriminatory property tax against her personal property since she is an Indian and Congress has not either expressly or impliedly granted the State of Minnesota and its political subdivisions the right to tax the property of an Indian. Although defendant cites several cases, including *Makah Indian Tribe* v. *Clallam County*, 73 Wash. 2d 677, 440 P. 2d 442 (1962), to support her position, that position is erroneous when applied to the present case since it fails to take account of changes in Congressional intent with respect to Indians in general and the Indians in Minnesota in particular. In order to pinpoint the error in this contention it is important to briefly examine a little Indian history.

It is true as stated by the defendant, that the Indians historically have had a unique relationship with the United States Government and thus also with states. But that relationship has changed drastically over the years. Justice Frankfurther summarized these changes in the case of *Organized Village of Kake* v. *Egan*, 369 U.S. 60, 82 S. Ct. 562 (1962):

> The relation between the Indians and the States has by no means remained constant since the days of

John Marshall.[3] In the early years, as the white man pressed against Indians in the eastern part of the continent, it was the policy of the United States to isolate the tribes on territories of their own beyond the Mississippi, where they were quite free to govern themselves. The 1828 treaty with the Cherokee Nation, 7 Stat. 311, guaranteed the Indians their lands would never be subjected to the jurisdiction of any State or Territory. Even the Federal Government itself asserted its power over these reservations only to punish crimes committed by or against non-Indians. 1 Stat. 469, 470; 2 Stat. 139. See U.S.C. Section 1152.

As the United States spread westward, it became evident that there was no place where the Indians could be forever isolated. In recognition of this fact the United States began to consider the Indians less foreign nations and more as a part of our country. In 1871 the power to make treaties with Indian tribes was abolished, 16 Stat. 544, 566, 25 U.S.C. Section 71. In 1887 Congress passed the General Allotment Act, 24 Stat. 388, as amended, 25 U.S.C. Section 331-358, authorizing the division of reservation land among individual Indians with a view toward their eventual assimilation into our society. In 1885, departing from the decision in Ex parte Crow Dog, 109 U.S. 556, 3 S.Ct. 396, 27 L. Ed. 1030, Congress intruded upon reservation self-government to extend federal criminal law over several specified crimes committed by one Indian against another on Indian land, 23 Stat. 362, 385, as amended, 18 U.S.C. Section 1153; *United States* v. *Kagama* 18 U.S. 375, 6 S.Ct. 1109, 30 L.Ed. 228. Other offenses remained matters for the title, *United States* v. *Quiver*, 241 U.S. 602, 36 S.Ct. 699 60 L. Ed. 1196.

The general notion drawn from Chief Justice Marshall's opinion in Worcester v. *Georgia*, 6 Pet.

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[3] See, e.g., defendant's reference to *Worcester* v. *Georgia*, 6 Pet. 515 (1831), and subsequent cases on page 3 of her brief.

515; 561, 8 L. Ed. 483; The Kansas Indians 5 Wall. 737, 755-757, 18 L. Ed. 667; and the New York Indians, 5 Wall. 761, 18 L. Ed. 708, *that an Indian Reservation is a distinct nation within whose boundaries state law cannot penetrate, has yielded to closer analysis when confronted, in the course of subsequent developments, with diverse concrete situations. By 1880 the Court no longer viewed reservations as distinct nations. On the contrary, it was said that a reservation was in many cases a part of the surrounding State or Territory, and subject to its jurisdiction except as forbidden by federal law. Utah & Northern R. Co.* v. *Fisher*, 116 U.S. 28, 31, 6 S. Ct. 246, 247, 29 L. Ed. 542. In Landford v. Monteith, 102 U.S. 145, 26 L.Ed. 53 the Court held that process might be served within a reservation for a suit in territorial court between two non-Indians. In United States v. McBratney 104 U.S. 621, 21 S.Ct. 924, 45 L.Ed. 1032, and Draper v. United States, 164 U.S. 240, 17 S.Ct. 107, 41 L.Ed. 419, the Court held that murder of one non-Indian by another on a reservation was a matter for state law.

The policy of assimilation was reserved abruptly 1964. A great many allottees of reservation lands had sold them and disposed of the proceeds. Further allotments were prohibited in order to safeguard remaining Indian properties. The Secretary of Interior was authorized to create new reservations and to add lands to existing ones. Tribes were permitted to become chartered federal corporations with powers to manage their affairs, and to organize and adopt constitutions for their own self-government. 48 Stat. 984 986, 987, 988. These provisions were soon extended to Alaska, 49 Stat. 1250.

Concurrently the influence of state law increased rather than decreased. As the result of a report making unfavorable comparisons between Indian Service activities and those of the States, Congress in 1929 authorized the States to enforce sanitation and quarantine laws on Indian reservations, to make

inspections for health and educational purposes, and to enforce compulsory school attendance. 45 Stat. 1185 as amended. 25 U.S.C. Section 231, See Meriam, Problem of Indian Administration (1928); H.R. Rep. No. 2135, 70th Cong., 2d Sess. (1929); Cohen Handbook of Federal Indian Law, p. 83 (1945); United States Department of the Interior, Federal Indian Law (1958), pp. 126-127. In 1934 Congress authorized the Secretary of the Interior to enter into contracts with States for the extension of educational, medical, agricultural, and welfare assistance to reservations, 48 Stat. 596 25 U.S.C. Section 452, During the 1940's several States were permitted to assert criminal jurisdiction, and sometimes civil jurisdiction as well, over certain Indian reservations. E.G., 62 Stat. 1161; 62 Stat. 1224, 25 U.S.C.A. Sec. 232; 64 Stat. 845, 25 U.S.C.A. Sec. 233; 63 Stat. 705. A new shift in policy toward termination of federal responsibility and assimilation of reservation Indians resulted in the abolition of several reservations during the 1950's. E.g. 68 Stat. 250, 25 U.S.C.A. Section 891 et seq. (Menominees); 69 Stat. 718, 25 U.S.C.A. Section 564 et seq. (Klamaths).

In 1953 Congress granted to several States full civil and criminal jurisdiction over Indian reservations, consenting to the assumption of such jurisdiction by an additional States making adequate provision for this in the future. 67 Stat. 588, 18 U.S.C. Sec. 1162, 28 U.S.C. Section 1360, Alaska was added to the list of such states 1958, 72 Stat. 545. This statute disclaims the intention to permit States to interfer with federally granted fishing privileges or uses of property. Finally the sale of liquor on reservations has been permitted subject to state law, on consent of the tribe itself. 67 Stat. 586, 18 U.S.C. Section 1161. Thus Congress has to a substantial degree opened the doors of reservations to state laws, in marked contrast to what prevailed in the time of Chief Justice Marshall. (Emphasis added.) 39 U.S. at 71-75.

This summary shows how the pendulum of Congressional policy has shifted from a position of complete federal control over the Indians in an attempt to isolate them (both by physical separation and by relieving them of the white man's rights and responsibilities) from the white man's society to a position of attempting to assimilate the Indians into the white man's society by transfering federal control to the states, thereby giving the Indians both the same rights and responsibilities shared by all other citizens. In other words, while at one time Congress exercised complete and exclusive jurisdiction over Indians, which meant that the states could exercise such jurisdiction only when it was expressly or impliedly granted to them by Congress, now, however, Congress has surrendered such jurisdiction to *certain* states such as Minnesota (P.L. 83-280) and these state may exercise that jurisdiction except where prohibited by the Constitution or an Act of Congress.

The *Makah* decision, as well as the other authority cited by the defendant, must be viewed in the light of this historical background. When the *Makah* decision is compared with the later Washington Supreme Court decision in *Tonasket* v. *State of Washington*,[4] 79 Wash. 2d 607, 488 P.2d 281 (1971), it is clear that the decision in *Makah* is based on the fact that Congress had not transferred plenary jurisdiction over the *Makah* Indian Tribe to the State of Washington and the State of Washington had not assumed such jurisdiction under Sec. 6 and 7 of Public Law 83-280. The Court in *Makah* also specifically pointed out that Articles 26 of the Washington constitution declares that (440 P.2d at 445)

> Indian lands shall remain under the absolute jurisdiction and control of the United States * * *.

Minnesota, on the other hand, has been granted plenary jurisdiction over all Indian country in Minnesota (except for the Red Lake Reservation) by P.L. 83-280, and Minnesota's Constitution specifically provides that Indi-

[4] See discussion of this case at pp. 15-18, infa. A copy of this case is contained in Appendix B for the Court's reference.

ans shall be subject to taxation. Minnesota Const. Art. XV. Sec. 2. The rule which the defendant cites from the *Makah* case is applicable only in those states which have not been granted or have not assumed plenary jurisdiction over the Indian country within their borders; and it is the reverse of the rule which is applicable in states which have jurisdiction over Indian country. Defendant's private property is therefore subject to taxation on the same basis as the private property of other citizens unless such taxation is expressly or impliedly prohibited.

A. THERE IS NO EXPRESS PROHIBITION AGAINST TAXING THE PROPERTY OF THE DEFENDANT IN QUESTION.

Defendant has cited no provision of the United States Constitution which expressly prohibits the State of Minnesota and its political subdivisions from taxing the personal property owned by the defendant since no such express prohibition exists. Defendant does imply, however, that an express prohibition against such taxation is contained in subdivision (b) of 28 U.S.C.A., Sec. 1360, which was the part of P.L. 83-280 transferring civil jurisdiction to certain states. Subdivision (b) provides in relevant part that:

> Nothing in this section (conferring civil jurisdiction over Indian country on certain states) shall authorize the alienation, encumbrance, or taxation of any real or personal . . . belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; * * * (Emphasis added.)

Subdivision (b) shows that Congress contemplated that the states may tax any real or personal property that is NOT "held in trust by the United States" or is NOT "subject to a restriction against alienation imposed by

the United States.[5] Since the personal property owned by the defendant which Itasca County is seeking to tax is not held in trust by the United States nor is it subject to a restriction against alienation imposed by the United States, such property is subject to taxation pursuant to Subdivision (a) of 28 U.S.C.A., Sec. 1360, which provides in part "those civil laws of such State or Territory that are of general application to *private persons* or *private property* shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory: * * * (Emphasis added). This distinction between trust or restricted property and non-trust or non-restricted property is also crucial in disposing of defendant's main contention that there is an implied prohibition against the taxation of defendant's personal property.

B. There Is No Implied Prohibition Against Taxing The Personal Property Of The Defendant.

The thrust of defendant's Contentions I and II, and the argument presented in support thereof, is that there is an implied prohibition on Itasca County's right to tax the defendant's personal property. More, particularly, the defendant's argument is that Itasca County is prohibited from taxing the personal property of the defendant under the instrumentality (inter-governmental immunity) doctrine. As examination of the instrumentality doctrine and the cases which defendant cites shows that the doctrine is inapplicable in the present case.

The instrumentality doctrine protects against interference with federal policy by state and local taxation.

[5] There is no doubt that real estate held in trust by the United States or subject to a restriction against alienation imposed by the United States was not subject to taxation even before the passage of P.L. 83-280. The dicta in Kirkwood v. Arenas, 243 F.2d 863, 865-866 (1957), referred to by defendant on page 8 of her brief that "The quoted part of the Act (28 U.S.C.A. § 1360(b)), however, is entirely consistent with, and in effect is a reaffirmation of, the law as it stood prior to its enactment . . ." is thus undisputed. But, as stated by the same court the rule is that in order to be immune from tax, it must be shown that the property was exempted by Congress from direct taxation. 243 F.2d at 865.

Rooted in Justice Marshall's often quoted declaration that "the power of taxing (a federal instrumentality) by the states may be exercised so as to destroy it" *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 427 (1819),[6] the instrumentality doctrine involved as means of preventing the taxation, and potential control of one's government's functions by another.

But as the instrumentality doctrine expanded, subsequent courts reacted to the fear that local governments were being deprived of too much tax revenue and they attempted to establish a test that would balance the conflicting interests of governmental sovereignty and the state's power of taxation. One solution was to distinguish an instrumentality's governmental function from its property, exempting only the former on the theory that this would sufficiently protect against interference with federal policy. Most courts have followed this distinction, with the result that some taxes on property have been upheld even though they imposed a financial burden on the governmental instrumentality or on the government itself. E.g., *Oklahoma Tax Comm'n* v. *Texas Co.*, 336 U.S. 342 (1948) (holding a lessee of mineral rights on restricted Indian land liable to non-discriminatory state gross production and excise taxes); *Taber* v. *Indian Terr. Illuminating Co.* 300 U.S. 1 (1937) (upholding a nondiscriminatory state ad valorem tax on equipment used by a private corporation operating for oil on restricted Indian land); *Alabama* v. *King & Boozer*, 314 U.S. 1 (1941) (upholding a sales tax on building materials bought for use in performing a cost-plus Government contract); and *United States* v. *Detroit* 335 U.S. 466 (1958) (upholding a tax on a lessee's

[6] Chief Justice Marshall endeavored to make it clear that the court's holding went no further than to strike down taxes which discriminated against the activities of the federal government. Marshall said that the decision should not be interpreted as extending to "a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State." 170 U.S. at 436.

business conducted on tax-exempt United States land, even though the taxes paid were deductible from the rent). These decisions did not deny that taxes that *directly* interfere with governmental function are illegal; they ruled that imposition of a pure financial burden on the federal government or its agents is generally too remote an interference with the governmental policy to be valid. See e.g. *Taber* v. *Indian Illuminating Co.*, supra. There is ordinarily no need to protect federal policy by invalidating such a tax because the courts can prevent a destructive effect when the situation arises, as Justice Holmes asserted in answer to Justice Marshall: "The power to tax is not the power to destroy while this Court sits." *Panhandle Oil Co.* v. *Mississippi ex rel. Knox*, 277 U.S. 218, 223 (1928), dissenting opinion.

With this background on the instrumentality doctrine it becomes easy to see why the defendant's assertion that the instrumentality doctrine prevents Itasca County from levying a non-discriminatory property tax against her personal property cannot be sustained. First, it is too late in the day for the defendant to argue that the Indians themselves are the federal instrumentalities and therefore *any* tax imposed upon an Indian is invalid. See, e.g. *Kake* v. *Egan*, supra. The cases cited by defendant show that it is not the Indians themselves, but *certain* property owned or used by the Indians under *certain* circumstances which is the federal instrumentality. A review of the cases cited show that the property which was exempted from taxation under this doctrine, with the exception of the *Makah* case,[7] was either real estate held in trust by the United States (or permanent improvements thereon which became part of the real estate), real property subject to restrictions on alienation, personal property given to the Indians by the United States under specific federal law or federal assistance program, or property derived from such property through sale and repurchase or otherwise. Defend-

[7] As pointed out on pp. 8-9, ante, the Makah case is distinguished on other grounds which make its hold erroneous if applied to the circumstances of this case.

ant's property does not fall into any of these categories. Thus, there is no federal instrumentality to which the instrumentality doctrine can apply in this case, other than the tribal trust land which the defendant leases. The United States Supreme Ccurt has held many times, that the instrumentality doctrine does not prevent the states or their political subdivision from taxing either the lessees of government lands or their property.

Second, the tax which Itasca County seeks to impose does not interfere with any federal policy. In fact, the imposition of the tax in question actually supports federal policies as enunciated by Congress. This conclusion was confirmed by the Washington Supreme Court in *Tonasket* v. *State of Washington*, 79 Wash. 2d 607, 488 P. 2d 282 (1971) where a full-blooded Indian commenced a declaratory judgment action asking the court to declare his right to do business with Indians and non-Indians on allotted Indian land held in trust by the federal government free of the requirements of state laws pertaining to the collection and remission of retail sales taxes. The relief sought was denied and the plaintiff appealed. The Washington Supreme Court affirmed the decision on the trial court which had held that the assumption of civil and criminal jurisdiction over the tribe of Indians in question pursuant to P.L. 83-280 was plenary, with only the limitation expressed therein, and such jurisdiction gave the states the power to regulate the activities of Indians in the same way that they regulate the activities of their citizens generally. In affirming the lower court's decision the Washington Supreme Court discussed Congressional intent in passing P.L. 83-280:

> If there were any doubt in our minds that it was the *intent of Congress* to make all the laws of the state, with their benefits and their burdens, applicable to the consenting tribes, and their members (with exceptions noted), that doubt would be resolved by an examination of the committee report upon which the Congress acted when it passed Public Law No. 83-280. We think the purpose is mani-

fest in the language used in the act, giving it its ordinary and commonly understood meaning, and the record shows that the purpose expressed was indeed the purpose intended.

In Senate Report No. 699,[8] which repeates in substance House Report No. 848 on House Resolution 1063 (which became Public Law No. 83-280 the following statement regarding the act and certain companion legislation appears:

> Your Committee on Interior and Insular Affairs through its Indian Affairs Subcommittee, and with continuing cooperation of the Secretary of the Interior and the Indian Bureau, has, during this session, operated in five major areas of legislation affecting the Indians. This legislation, whether before the House or presently under committee consideration, has two coordinate aims: First, withdrawal of Federal responsibility for Indian affairs wherever practicable; and second termination of the subjection of Indians to Federal laws applicable to Indians as such.

Upon the question of civil jurisdiction, the report stated:

> Similarly, the *Indians of several States have reached a state of acculturation and development that makes desireable extension of State civil jurisdiction to the Indian country within their borders.* Permitting the State courts to adjudicate civil controversies arising on Indian reservations, and *to extend to those reservations the substantive civil laws of the respective states insofar as those laws are of general application to private persons or private property, is deemed desireable.*

After consideration of the proposed legislation, the committee concluded that: any legislation in this area should be on a general basis, making provision for all

[8] The full text of Senate Report No. 699 is reproduced in Appendix A for the convenience of the Court.

affected States to come within its terms; that the attitude of the various States and the Indian groups within those States on the jurisdiction transfer question should be heavily weighed before effecting transfer; and that any recommended legislation should retain application of Indian tribal customs and ordinances to civil transactions among the Indians, *insofar as these customs or ordinances are not inconsistent with applicable State laws.*

We cannot conceive that it was the intent of Congress to extend to Indians only the protection and benefits of State laws, with none of their attendant duties and responsibilities, and we find no such intention expressed in the statute. True, there are certain immunities and protections afforded the Indians in the enjoyment of their trust properties and their rights of fishing, trapping and hunting. These place the Indian in a position of advantage not shared by other citizens. (Emphasis added.) 488 P.2d at 285-286.

P.L. 83-280 also granted the State of Minnesota plenary civil and criminal jurisdiction over the Leech Lake Reservation and, as stated by Congress and the Court in *Tonasket*, the intent of this legislation was to subject Indians to the laws of the states, both to their benefits and their burdens,[9] "insofar as those laws are of general application to private persons or *private property* . . ." (Emphasis added). U.S. Cong. & Admin. News, p. 2412 (1953). The instrumentality doctrine cannot be used as an implied prohibition against the imposition of the property tax in question since the imposition of the tax actually helps implement, rather than interferes with,

[9] The background history of P.L. 83-280 states, for example, that:

> Congress has many times in the past considered and enacted legislation having as its purpose payment of current tribal income on a pro rata basis to individual members of each tribe where such payments are consistent with the point of safety in the protection of the tribe as a whole. Such payments recognize *the responsibility of the tribe and of individual members to contribute a fair share of services enjoyed by them.* U.S. Cong. & Admin. News, p. 2410-2411 (1953).

federal policy as stated by the Congress in Senate Report No. 699.

Finally in this connection, it should be noted by this Court, as was done by the court in State Tax Commissioner v. Barnes, 178 N.Y.S. 2d 932 (1938), that in relatively recent times when Congress wished a tribe of Indians of their property to be free from state taxation, Congress expressly provided for such exemption.

See e.g., 25 U.S.C.A., Sec. 233, 48 Stat. 984; and 49 Stat. 1967. This is exactly what Congress did in P.L. 83-280 when it provided that Indians were to be subject to the same laws that applied to other citizens and their private property, yet also providing as an exception to that rule that property held in trust by the United States or subject to taxation. Since the personal property of the defendant which Itasca County is seeking to tax is not held in trust by the United States nor subject to restrictions against alienation imposed by the United States, the conclusion that this property is taxable on a non-discriminatory basis is inescapable.

In Summary, the argument and cases advanced by the defendant in an attempt to avoid paying her fair share of the burden connected with the benefits she receives from her local government are not applicable in the present case for one or more of the following reasons:

1. Present federal policy is to assimilate the Indians in Minnesota (except for the Red Lake Band) into the white man's society by subjecting them to the benefits and the same burdens as other citizens.

2. The property sought to be taxed by Itasca County is not property held in trust by the United States, is not property subject to restrictions on alienation imposed by the United States, is not property given to the defendant by the United States pursuant to a federal law or federal assistance program, and it is not property derived from such property by sale and repurchase, or otherwise.

3. The federal government which had exercised full and exclusive jurisdiction over Indians has now granted that jurisdiction to certain states, including Minnesota, in accordance with its policy of subjecting Indians and

their property to the same state laws to which other private persons and their property are subject.

The Chippewa Indians in Minnesota (except for the Red Lake Band) have determined that they wish to be subject to the same laws as the other citizens of the State of Minnesota, U.S. Cong. & Admin. News, p. 2412 (1953), Congress has so provided, P.L. 83-280, and Itasca County is exercising its sovereign power to tax accordance with that determination.

Finally, it should be remembered that it is fundamental rule of taxation that taxation is the rule, and exemption is an exception in derogation of equal rights, and that exemptions from taxation must be strictly construed. *Camping and Education* v. *State*, 282 Minn. 245, 164 N.W. 2d 369 (1969).

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[Endorsed—Filed March 28, 1975, John McCarthy, Clerk, Minnesota Supreme Court]

RUSSELL BRYAN, Individually, and on behalf of All Other Persons Similarly Situated, APPELLANT

vs.

ITASCA COUNTY, MINNESOTA, RESPONDENT

SYLLABUS

The State of Minnesota, or its political subdivisions, may impose a personal property tax upon a mobile home owned and occupied by an enrolled member of the Chippewa Tribe of Minnesota who resides within a Chippewa reservation upon land held in trust by the United States Government for the tribe.

Affirmed.

Considered and decided by the court en banc.

OPINION

YETKA, Justice.

This is an appeal from a judgment of the district court, holding plaintiff, an enrolled member of the Minnesota Chippewa Tribe,[1] liable for the payment of personal property taxes on his mobile home.[2] We affirm.

Plaintiff is the owner of a certain 1972 Skyline mobile home, in which he resides with his wife and family.

[1] The Minnesota Chippewa Tribe is organized and recognized as an Indian Tribe by the United States pursuant to the Act of June 18, 1934 (48 Stat. 984) as amended, under a Federal charter of incorporation issued by the then Secretary of Interior, and ratified by the tribe on November 13, 1937.

[2] The taxes challenged by plaintiff were imposed for the years 1971 and 1972 pursuant to the applicable provisions of Minn. St. 168.012, subd. 9, and § 272.01, subd. 1. Mobile homes during 1971 and 1972 were classified as 2a property. Minn. St. 273.13, subd. 3.

The mobile home is located on land held in trust for the Chippewa Tribe of Minnesota by the United States Government within the boundaries of the Greater Leech Lake Indian Reservation.

On September 12, 1972, plaintiff commenced an action in the District Court of Itasca County, seeking declaratory and injunctive relief from the tax in question on grounds the county has no authority to levy such a tax upon plaintiff and others similarly situated.

The matter was heard by the district court on March 15, 1973, which thereafter issued findings of fact and conclusions of law determining that plaintiff was not immune from the personal property tax. Plaintiff appeals from the judgment entered on December 8, 1973.

The issue raised on this appeal is whether the State of Minnesota, or its political subdivisions, may impose a personal property tax upon a mobile home owned and occupied by an enrolled member of the Chippewa Tribe of Minnesota who resides within a reservation upon land held in trust by the United States government for the tribe.

As will be shown hereafter, Indians have traditionally enjoyed a unique status both under decisions of this court and those of the Federal judiciary. It has been uniformly held that no state may levy a tax upon an Indian tribal member unless authorized by Congress to do so.

In the recent case of *McClanahan* v. *Arizona Tax Comm.* 411 U.S. 164, 93 S. Ct. 1257, 36 L. ed. 2d 129 (1973), the court was confronted with an attempt by the State of Arizona to impose a state income tax upon the income of an enrolled member of the Navajo tribe who lived and derived her income from activities upon the reservation. The court held the tax imposition to be unlawful on grounds that no treaty or Federal law authorized this tax. It is relevant to note that Arizona was not in included within the scope of Public Law 280, 67 Stat. 583,[3] 18 USCA, § 1162, and 28 USCA, § 1360. The court stated:

[3] Subsequently amended by 69 Stat. 795, 72 Stat. 545, and 84 Stat. 1358.

> "* * * 'State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply. It follows that Indians and Indian property on an Indian reservation are not subject to State taxation except by virtue of express authority conferred upon the State by act of Congress.' U.S. Dept. of the Interior, Federal Indian Law 845 (1958) (hereafter Federal Indian Law)." 411 U.S. 170, 93 S. Ct. 1261, 36 L. ed. 2d 135.

In Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S. Ct. 1267, 36 L. ed. 2d 114 (1973), a companion case of McClanahan, the court was confronted with an attempt by the State of New Mexico [4] to impose a tax upon receipts of a ski resort operated by plaintiff tribe under the auspices of the Indian Reorganization Act upon land leased from the United States Forest Service. The state also imposed a compensating use tax upon the purchase price of materials used to construct ski lifts upon the leased property.

The court upheld the receipts tax upon the ground that off-reservation Indian activities are subject to more extensive state authority. The court then held such activities were subject to state law, absent express Federal law to the contrary.

However, the court held the ski-lift equipment to be exempt from state taxation because that equipment had been permanently attached to the realty and thus it was exempt in the same manner as was the land itself.

Mescalero is relevant to our inquiry as a reaffirmance of the principle that—

> "* * * in the special area of state taxation, absent cession of jurisdiction or other federal statutes permitting it, there has been no statutory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation, and *McClanahan* v. *Arizona State Tax Comm'n*, *supra*, lays to rest any doubt in this respect by holding that such taxation is not permissible absent congressional consent." 411 U.S. 148, 93 S. Ct. 1270, 36 L. ed. 2d 119.

[4] New Mexico was not included within the scope of 67 Stat. 589, as amended, 18 USCA, § 1162, and 28 USCA, § 1360.

Therefore, the current status of the law as set forth in McClanahan and Mescalero may be summarized as follows:

(1) The doctrine of Indian sovereignty is relevant as a backdrop in determining the applicability of state laws to reservation Indians.

(2) Congress has plenary jurisdiction over reservation Indians. That jurisdiction may be ceded to the states only by express grants of jurisdiction. In absence of such grants, no state power exists.

Thus we must first determine whether Congress vested authority in the State or Minnesota to levy this tax upon a reservation Indian.

Defendant advances three sources of power to tax plaintiff:

(1) The Minnesota Enabling Act.[5]
(2) The Minnesota Constitution.[6]
(3) Public Law 280.[7]

The Minnesota Enabling Act is silent as to any Indian lands located within the territorial boundaries of Minnesota. Defendant points out that such is not the case with the enabling acts of certain of our sister states.[8] Thus, defendant concludes that state jurisdic-

[5] 11 Stat. 166.

[6] Minn. Const. art. 15, § 2, which subsequent to the commencement of this action was removed by the 1974 amendment to the constitution.

[7] 67 Stat. 588, as amended, 18 USCA, § 1162, and 28 USCA, § 1360.

[8] Arizona and New Mexico, 36 Stat. 557; Montana, North Dakota, South Dakota, and Washington, 25 Stat. 676, 677; Oklahoma, 34 Stat. 267; and Utah, 28 Stat. 107. The Arizona statute is typical, providing that Indian lands in Arizona shall remain "under the absolute jurisdiction and control" of the United States. 36 Stat. 557, 569.

tion, including the power to tax reservation Indians, was granted by the enabling act.

Defendant also contends that Article 15, § 2, of the Minnesota Constitution [9] expressly allows for taxation of Indians and was approved by Congress. However, the above two arguments must fail in light of State v. Jackson, 218 Minn. 429, 16 N.W. 2d 752 (1944). That case involved an attempt by the state to enforce its game laws against a reservation Indian while upon the reservation. In holding such Indians immune from prosecution under state game laws, this court stated:

> "* * * But it is as uniformly held that, absent a treaty or federal statute conferring it, a state's jurisdiction does not extend over the individual members of an Indian tribe maintaining their tribal relations and organization upon a reservation within the geographical limits of the state. Such tribes are domestic, dependent communities under the guardianship, protection, and exclusive jurisdiction of the federal government, with the power of regulating their own internal and social relations, except as otherwise directed by congress. * * *
>
> "The admission of a state into the Union, even without an express reservation by congress of governmental jurisdiction over the public lands within its borders, does not qualify the former federal jurisdiction over tribal Indians so as to withdraw from the United States authority to punish crimes committed by or against Indians on an Indian reservation (Donnelly v. United States, *supra*), or so as to make tribal Indians amenable to state laws for crimes committed on their reservation. United States v. Kagama, *supra*; 27 Am. Jur., Indians, § 47. Whatever rights a state acquires by its Enabling

[9] Minn. Const. art. 15, § 2, prior to its removal in 1974, stated:

"§ 2. Residents on Indian lands

"Sec. 2. Persons residing on Indian lands within the State shall enjoy all rights and privileges of citizens, as though they lived in any other portion of the State, and shall be subject to taxation."

> Act are subordinate to the Indians' prior right of occupancy. United States v. Thomas, 151 U.S. 577, 583, 14 S. Ct. 426, 428, 38 L. ed. 276, 278; Tulee v. Washington, 315 U.S. 681, 62 S. Ct. 862, 86 L. ed. 1115; State v. Cooney, 77 Minn. 518, 80 N.W. 696." 218 Minn. 431, 16 N.W. 2d 754.

The language of Public Law 280 lends support to defendant's assertion of power to levy the tax at issue. Specifically, 28 USCA § 1360, provides as follows:

> "(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, *and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:*

"State or Territory of	Indian country affected
Alaska	All Indian country within the Territory.
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State.

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section." (Italics supplied.)

Defendant logically argues that unless paragraph (a) is interpreted as a general grant of the power to tax, then the exceptions contained in paragraph (b) are limitations on a nonexistent power.

Plaintiff contends that Public Law 280 was intended as a "law and order" statute not intended to grant such sweeping powers to state and local governments.

A review of the legislative history of the act discloses that this provision was enacted in furtherance of the congressional policy of "termination" as expressed in H.R. Con. Res. 108, 83rd Cong. 1st Sess., 67 Stat. B 132, which states:

> "* * * (I)t is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards

> of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and
>
> "* * * the Indians within the Territorial limits of the United States should assume their full responsibilities as American citizens."

At oral argument, one of the attorneys representing the United States Department of Interior advised this court that the government's policy of assimilation was no longer working, and the department now supports plaintiff's position. However, this court is bound to interpret the statutes according to the intent of Congress *at the time of passage* of Public Law 280. If Congress today intends a different result, it can easily repeal or modify Public Law 280. However, we accept the logic of defendants' position that it would make little sense for Congress to grant full civil and criminal powers to the State over all Indian territory and all Indian tribes in Minnesota (except the Red Lake Band) and specifically exempt certain property from taxation if the power to tax were not included within the original civil powers granted. See, Note, 39 Minn. L. Rev. 853.

The case most directly in point is a recent decision reached in the Federal District Court for the District of Nebraska in Omaha Tribe of Indians v. Peters, 382 F. Supp. 421 (D. Neb. 1974). That court held that Public Law 280 granted the State of Nebraska the power to levy a state income tax upon the income derived by an Indian from employment on the reservation. The following excerpts from the court's opinion are relevant:

> "* * * (I)t should be noted that P.L. 280 does not subject Indians to the jurisdiction of the state *by implication*. The statute is a clear and express grant of power subject only to the limitations stated in the ensuing sections of the statute. * * *
>
> * * * *
>
> "* * * Given Congress' power to end the federal guardianship in total, it obviously has the power to establish an orderly program looking to the day

when the guardianship can be ended. That is precisely the type of program evidenced by the statute in this case. *See* U.S. Code Cong. & Admin. News, p. 2409 et seq. (1953). The statute also suggests that Congress felt that the termination of the federal guardianship over the affected tribes should result in their assimilation into the mainstream of life of the states wherein they are located. P.L. 280 is a step intended to prepare the Indian tribes for this assimilation by making all state laws applicable to Indians and in Indian country except as those laws may contravene the provisions of the statute itself.

* * * *

"The language and structure of P.L. 280 strongly suggests that Congress intended to convey to the states the authority to enforce its revenue laws in Indian country. *The statute grants civil jurisdiction to the states over causes of actions involving Indians as parties and states that the civil laws of general application shall have the same force and effect as to Indians and within Indian country as they have throughout the state. This grant of power is then modified in later subsections to permit the federal government to retain its authority in certain areas such as over Indian trust property.* One can only presume that the grant of jurisdiction in subsection (a) was to be considered plenary except as it was expressly limited by the statute. Any other interpretation of subsection (a) would require this Court to read into that section something which simply is not there. If Congress had intended to exempt Indians from the state's revenue laws, the Court feels certain that it would have expressly done so, as it exempted certain other Indian property from state jurisdiction in subsection (b) of P.L. 280, and as it expressly exempted reservation Indians from the provisions of the Buck Act. 4 U.S.C. § 109. By failing to qualify (sic) subsection (a) Congress has expressly subjected Indians and Indian country to *all* state laws of general

application including state revenue laws except where the application of those laws would violate one of the stated jurisdictional limitations in the statute.

"The above interpretation is strongly supported by the legislative history of P.L. 280. U.S. Code Cong. & Admin. News, pp. 2409, 2412 (1953) indicates that P.L. 280 was drafted because

> 'The Indians of several states have reached a stage of acculturation and development that makes desirable extension of States civil jurisdiction to the Indian country within their borders. Permitting the State courts to adjudicate civil controversies arising on Indian reservations, and to extend to those reservations the substantive civil laws of the respective States insofar as those laws are of general application to private persons or private property, is deemed desirable.'
>
> It was Congress' goal that this legislation be a step toward the day when the federal trusteeship over Indians could be finally ended through the assimilation of the tribes into the mainstream of life of the affected states. Id. at 2409; Williams v. Lee, *supra*, 358 U.S. at 220, 79 S. Ct. 269. There is no suggestion in either the legislative history of the Act, or in the language of the Act itself, that Congress intended that Indian tribes should derive the advantages of state law, while, at the same time, being shielded from its burdens." (Italics supplied in part.) 382 F. Supp. 424.

The Peters case appears to be the only case relevant to the instant inquiry. Defendant relies upon Agua Caliente Band of Mission Indians v. County of Riverside, 442 F. 2d 1184 (9 Cir. 1971), certiorari denied, 405 U.S. 933, 92 S. Ct. 930, L. ed. 2d 809 (1972). However, as plaintiff points out in his reply brief, that case dealt with an attempt to impose a leasehold tax upon a non-Indian. Commissioner of Taxation v. Brun, 286 Minn. 43, 174 N.W. 2d 120 (1970), is also not

relevant here. That case dealt with the Red Lake Band of Chippewa Indians, which occupies a distinct position and is not subject to Public Law 280. The recent case of *Tonasket* v. *State*, 84 Wash. 2d 164, 525 P. 2d 744 (1974), which reconsidered *Tonasket* v. *State*, 79 Wash. 2d 607, 488 P. 2d 281 (1971), upon remand from the United States Supreme Court, 411 U.S. 451, 93 S. Ct. 1941, 36 L. ed. 2d 385 (1973), is not particularly helpful since it actually dealt only with the narrow issue of the power of a state, following its assumption of jurisdiction over Indian tribes pursuant to Public Law 280, to impose a tax upon the sale of cigarettes within the reservation boundaries by an Indian seller to non-reservation customers.

Plaintiff's strongest argument lies in the application of rules of construction, the most prominent of which was repeated in McClanahan as follows:

> "The Indian sovereignty doctrine is relevant, then, not because it provides a definitive resolution of the issues in this suit, but because it provides a backdrop against which the applicable treaties and federal statutes must be read."[10] 411 U.S. 172, 93 S. Ct. 1262, 36 L. ed. 2d 136.

Plaintiff cites the absence of any specific grant of taxing power in Public Law 280 and thus characterizes the granting of such a power as doubtful.[11] Of course, herein lies the crux of the entire case. Defendant's position, and the opinion of the court in *Peters* is that Public Law 280 is a clear grant of the power to tax, and we so hold.

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[10] See, also, *Squire* v. *Capoeman*, 351 U.S. 1, 76 S.Ct. 611, 100 L. ed. 883 (1956); *Choate* v. *Trapp*, 224 U.S. 665, 32 S. Ct. 565, 59 L. ed. 941 (1912).

[11] In *Omaha Tribe of Indians* v. *Peters*, 382 F. Supp. 421, 425 (1974), the court stated that the rule of construction as set forth in *McClanahan* does not apply "when the taxing authority has jurisdictional power over the tribe." This statement presupposes resolution of the crucial question—whether jurisdiction in fact exists. Thus, the *McClanahan* rule of construction is applicable if in fact P.L. 280 contains a doubtful expression.

Although it is conceded that Indians have had a unique legal status in our society since earliest times, the various Indian tribes are not sovereign states. They only have such powers as Congress allows them to retain.

It has been the Federal government, through its vacillation in determining the best course to follow for over 100 years, that has led to the present confusion, including the issues raised by this lawsuit. The government first appears to move toward termination and assimilation, then to retreat from those objectives, and retrenches, this indecision has resulted in a great deal of confusion. However, insofar as Public Law 280 is concerned, we think the Federal District Court which decided the Peters case was correct when it stated:

> "The language and structure of P.L. 280 strongly suggest that Congress intended to convey to the states the authority to enforce its revenue laws in Indian country. * * * One can only presume that the grant of jurisdiction in subsection (a) was to be considered plenary except as it was expressly limited by the statute." 382 F. Supp. 426.

It appears to us that Congress must decide whether to continue the program of assimilation which was outlined in the Hoover Commission Report of 1949, and embodied in Public Law 280 or to return greater sovereign immunity to the various Indian tribes, including the return to them of full civil and criminal jurisdiction free from all state control, and the freeing of the states from some liability for the care, support and administration of the varoius Indian tribes. To choose the latter alternative without freeing the states of their responsibilities would appear to raise a serious question of violation of the equal protection clauses of both the United States Constitution and the Constitution of the State of Minnesota.

Plaintiff has, for the first time, alleged in his brief that his mobile home was in fact annexed to tribal trust land, and thus is exempt under Public Law 280. However, in his complaint plaintiff does not allege that

the mobile home is real property. In fact, paragraph 9 of his complaint states the defendant has no lawful authority "to assess or impose a tax upon his *personal property.*" (Italics supplied.) This entire lawsuit and appeal were predicated on the assumption that this mobile home was in fact personal property. The trial court in its findings stated:

> "That there is no claim that the 1972 Skyline mobile home is any part of the real estate, but is personal property."

Therefore, we do not rule as to whether the mobile home can be taxed if in fact it is permanently affixed to the realty and cannot be removed by the owner, and thus is assessable in the manner of real estate taxes. This court has repeatedly refused to decide issues first raised on appeal. *Rathbun* v. *W. T. Grant Co.* —— Minn. ——, 219 N.W. 2d 641 (1974); *Tourville* v. *Tourville*, 292 Minn. 489, 198 N.W. 2d 138 (1972).

In summary, the question raised is whether Public Law 280 provides authority for defendant to levy the tax at issue. The language of the act, case law, and logic lend support to defendant's position.

The trial court therefore must be and hereby is affirmed.

MR. JUSTICE KELLY and MR. JUSTICE KNUTSON took no part in the consideration or decision of this case.

STATE OF MINNESOTA, SUPREME COURT

44947

RUSSELL BRYAN, Individually, and on Behalf of All Other Persons Similarly Situated, APPELLANT

vs.

ITASCA COUNTY, MINNESOTA, RESPONDENT

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Itasca be and the same hereby is in all things affirmed.

Dated and Signed: April 10, 1975

BY THE COURT
Attest:
John McCarthy, Clerk.

STATE OF MINNESOTA)
) ss.
SUPREME COURT)

I, John McCarthy, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the case therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol in the City of St. Paul, November 20, 1975.

John McCarthy, Clerk
By Wayne Tschimperle, Deputy.

(Transcript of Hearings on H.R. 1063 Before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs, 83rd Cong., 1st Sess. (1953). These hearings were not published. A transcript was produced by the United States during the briefing of Tonasket v. State of Washington, 411 U.S. 451 (1973).)

CONTENTS

H. R. 1063

Monday, June 29, 1953

House of Representatives,
Subcommiteee on Indian Affairs,
Committee on Interior and Insular Affairs,
Washington, D.C.

The subcommittee thereupon proceeded to the consideration of H.R. 1063, Honorable E. Y. Berry (chairman) presiding.

Mr. Berry. We will next take up H.R. 1063.

H. R. 1063

STATEMENT OF HARRY A. SELLERY, JR., CHIEF COUNSEL, BUREAU OF INDIAN AFFAIRS

Mr. Sellery. Mr. Chairman and members of the committee, H.R. 1063 is a bill to amend Title 18 of the United States Code entitled "Crimes and Criminal Procedure" with respect to State jurisdiction over offenses

committed by or against Indians in the Indian country and to confer on the State of California civil jurisdiction over Indians in that State.

The State now lacks jurisdiction to prosecute Indians for most offenses committed on Indian reservations or other Indian country as defined in Title 18, section 1151 of the United States Code, except in the case of the Agua Caliente Indian Reservation. State criminal jurisdiction over this one reservation was previously conferred.

The United States district courts have a measure of jurisdiction over offenses committed on Indian reservations or other Indian country by or against Indians, but in cases of offenses committed by Indians against Indians that jurisdiction is limited to the so-called ten major crimes listed in section 1153 of Title 18, United States Code. As a practical matter, the enforcement of law and order among the Indians in the Indian country has been left largely to the Indian groups themselves, and in California they are not adequately organized to perform that function. Consequently, the Department believes there is a serious hiatus in law enforcement authority that can best be remedied by conferring jurisdiction on the State, and the Indians of California have also reached a stage that makes desirable the extension of State civil jurisdiction to the Indian country in that State.

At the direction of the Commissioner of Indian Affairs, the Area Director of the Bureau of Indian Affairs at Sacramento, California, consulted with the various Indian groups on a legislative proposal similar to H.R. 1063, and none of them have indicated any opposition to the enactment of a bill such as this. The Hoopa Valley Indians, comprising the largest single group within the State, have adopted resolutions favoring the proposal to confer civil and criminal jurisdiction on the State. Representatives of other groups have done likewise. The California Legislature has memorialized Congress in favor of this legislation and certain other legislation not before us this morning.

The Department recommends that the bill be recast in a form which is attached as a substitute bill which would, we believe, assist in the codification in this bill of the existing sections of the civil and criminal codes of Title 18 for the criminal aspects and Title 28 of the judicial code for the civil aspects. If this type of bill is adopted, we hope it may be a prototype and it will be possible to add Indians in other States in the code so that, from the point of view of an attorney looking into this matter, he will be able to the case what the State civil and criminal jurisdiction may be with respect to Indians of a particular State.

You will observe, for example, on page 2 of the draft substitute bill that in the case of California, the Indian country affected is that within the Federal-State civil and criminal jurisdiction, which will no longer obtain, as the State is given jurisdiction over all of the Indian country within the State.

It appears in the case of some of the other criminal and civil jurisdiction bills that the Department will recommend to the Congress that certain reservations be excepted where law and order are regarded as adequate and where the tribe affirmativly indicated its preference for confirmation under its law and order code. But this prototype form we believe will assist in cases of civil and criminal jurisdiction as showing quickly at places in the code where we believe it will be most helpful to attorneys and others what Indian country, if any, may be excepted from State civil and criminal jurisdiction.

It may also be observed that there are provisions in the bill which will, we believe, protect the rights of Indian groups without special recognition from the Congress in the form of a treaty, agreement, or statute with respect to hunting, trapping, or fishing or control of licensing and the regulation thereof, and with those protections both on the criminal side and the civil side in the bill it would mark a definite step forward in the inclusion into the general body of the people of the Indians of that particular State with respect to civil

and criminal jurisdiction, so that they will be subject to the same laws and the same rules as the other citizens.

The Department has recommended that the bill be adopted, but the suggestions of the substitute bill are intended to be of assistance in the uniform treatment of this and other bills.

In order to have it absolutely uniform with respect to California, it is recommended that section 1 of the Act of October 5, 1949, which conferred on the State of California civil and criminal jurisdiction over the land and residents of the Agua Caliente Indian Reservation, be repealed so that there will be the same rule applicable to all Indians in the State.

I would direct your attention to the fact that the Department has submitted this report because of the express desire of the committee to have it without having first received prior clearance from the Bureau of the Budget. Hence the Department cannot make any commitment at this time concerning the relationship of the views of the Department to the program of the President. However, copies of this report have been submitted to the Bureau of the Budget, and it is hoped we will know within a few days whether or not they believe it is in accord with the program.

Mr. Berry. Are there any questions?

Mr. Saylor. You have listed in the substitute bill a method to have this as a prototype which will be used for other Indian tribes. You have started here with the State of California, and I would like to have submitted by the Department a recommendation not only with respect to the State of California but in regard to every other one of the western States that have Indians or every State that has Indians, including South Carolina, North Carolina, and Florida. This committee should know what the views of the Department are at the present time not only with regard to the Indians of California but in regard to all of the Indians in all of the States.

Mr. Sellery. I will see that that is done.

Mr. Saylor. Also what Indian country you would recommend, whether all Indian country within the State

or whether certain parts of the Indian country can be excepted.

Mr. D'Ewart. The phrase "Indian country" is already defined by law and has a very distinct meaning. It is defined in the recodification statutes adopted a very few years ago, and it is very clear.

Mr. Saylor. I think also the committee should have the benefit of the Department's views. You state there are certain sections of the Code which would not be applicable in the State of California and I think we should be advised of sections which would not be applicable not only to this law but any other law which might be affected if a similar Act were adopted for all of the Indians.

Mr. Sellery. I wonder if you may have misunderstood me. We are recommending that the State have civil and criminal jurisdiction over all Indians in the State of California and the concurrent jurisdiction of the United States in connection with the ten major crimes and similar criminal acts be ceded to the State so that there will be nothing except State jurisdiction in the State of California. There will be no exception.

Mr. Saylor. Then, I understood, as a second amendment you said you had here in this supplemental bill—was it not the purpose of making sure there would not be concurrent jurisdiction in the State and Federal Government?

Mr. Sellery. That is true.

Mr. Shuford. I think we in North Carolina have only one tribe of Indians—the Cherokees—although we have Indians in the eastern part of North Carolina. Are those under the supervision of the Bureau of Indian Affairs?

Mr. Sellery. Yes, sir; they are. The eastern band of Cherokees is separated from the balance of the North Carolina Indians.

Mr. Shuford. We also have Indians in the eastern part of North Carolina.

Mr. Sellery. I am advised they are not.

Mr. Shuford. I do not think that tribe has definitely been established by the courts.

Mr. Sellery. In any event, they are not under the jurisdiction of the Bureau of Indian Affairs.

Mr. Rhodes. I would like to request the Department to consider whether or not the State feels that the Indians within the State are ready for this type of jurisdiction and also whether the State itself is ready.

Mr. Sellery. In the case of California—I skipped over that point—the State has indicated its willingness.

Mr. Rhodes. I am thinking of Arizona as to what effect it might have on the law enforcement agencies of the State of Arizona and also whether the Indians of Arizona have expressed any views.

Mr. Sellery. I think such inquiries are in process with respect to other bills.

Mr. Young. Does your bill limit the provision for Federal assistance to States in defraying the increased expenses of the courts in connection with the widening of the jurisdiction that the bill encompasses?

Mr. Sellery. No; it does not.

Mr. Young. Do you think it would be necessary to provide for some payment, inasmuch as the great portion of Indian lands are not subject to taxation?

Mr. Sellery. The Department's report on the Nevada bill has some comments on that. If it is appropriate, I would like to read this in that connection. Generally, the Department's views are that if we started on the processes of Federal financial assistance or subsidization of law enforcement activities among the Indians, it might turn out to be a rather costly program, and it is a problem which the States should deal with and accept without Federal financial assistance; otherwise there will be some tendency, the Department believes, for the Indian to be thought of and perhaps to think of himself because of the financial assistance which comes from the Federal Government as still somewhat a member of a race or group which is set apart from other citizens of the State. And it is desired to give him and the other citizens of the State the feeling of a conviction that he is in the same status and has access to the same services, including the courts, as other citizens of the State who are not Indians.

Mr. Young. That would not quite be true, though; would it? Because for the most part he does not pay any taxes.

Mr. Sellery. No. There is that difference.

Mr. Young. A rather sizable difference in not paying for the courts or paying for the increased expenses for judicial proceedings.

Mr. Sellery. The Indians, of course, do pay other forms of taxes. I do not know how the courts of Nevada are supported financially, but the Indians do pay the sales tax and other taxes.

Mr. Young. But no income tax or corporation tax or profits tax. You understand a large portion of the land is held in trust and therefore is not subject to tax.

Mr. Sellery. That is correct.

Mr. Young. So far as my State is concerned, it would be a large burden on existing costs of judicial procedure. I think it is only right that the Federal Government should make some contribution for that. You seem to differentiate. I think there is a differentiation, too, in that they are not paying taxes.

Mr. Sellery. I will concede your point that they are not paying taxes. The Department has recommended, nevertheless, that no financial assistance be afforded to the States.

Mr. Berry. Is there no authority now for the Department to assist counties in this work?

Mr. Sellery. I am advised there is none.

Mr. D'Ewart. That is only partly true. The Tribal Council sometimes appropriates some funds to help pay the peace officer, and the counties sometimes appoint an Indian as deputy sheriff to cooperate with the towns.

Mr. Sellery. I think Congressman Berry was addressing himself to funds advanced by the Federal Government.

Mr. D'Ewart. Have you ever paid part of the salary of a sheriff?

Mr. Sellery. Mr. Benge, who is chief of our Law and Order Branch, advises me we have not.

Mr. D'Ewart. I was thinking of the Reindeer Reservation where part of that salary was paid. Maybe I am wrong. Maybe they were only using tribal funds.

Mr. Sellery. I think so. That is done in many cases, as you correctly observe.

(The subcommittee thereupon went into executive session.)

TREATY WITH THE CHIPPEWA, 1855

Articles of agreement and convention made and concluded at the city of Washington, this twenty-second day of February, one thousand eight hundred and fifty-five, by George W. Manypenny, Commissioner, on the part of the United States, and the following-named Chiefs and delegates, representing the Mississippi bands of Chippewa Indians, viz: Pug-o-na-ke-shick, or Hole-in-the-day; Que-we-sans-ish, or Bad Boy; Wand-e-Kaw, or Little Hill; I-awe-showe-we-ke-shig, or Crossing Sky; Petud-dunce, or Rat's Liver; Mun-o-min-e-kay-shein, or Rice-Maker; Mah-yah-ge-way-we-durg, or the Chorister; Kay-gwa-daush, or the Attempter; Caw-caug-e-we-goon, or Crow Feather; and Show-baush-king, or He that passes under Everything, and the following-named Chiefs and delegates representing the Pillager and Lake Winnibigoshish bands of Chippewa Indians, viz: Aish-ke-bug-e-koshe, or Flat Mouth; Be-sheck-kee, or Buffalo; Nay-bun-a-caush, or Young Man's Son; Maug-e-gaw-bow, or Stepping Ahead; Mi-gi-si, or Eagle, and Kaw-be-mub-bee, or North Star, they being thereto duly authorized by the said bands of Indians respectfully.

ARTICLE 1. The Mississippi, Pillager, and Lake Winnibigoshish bands of Chippewa Indians hereby cede, sell, and convey to the United States all their right, title, and interest in and to, the lands now owned and claimed by them, in the Territory of Minnesota, and included within the following boundaries, viz: Beginning at a point where the east branch of Snake River crosses the southern boundary-line of the Chippewa country, east of the Mississippi River, as established by the treaty of July twenty-ninth, one thousand eight hundred and thirty-seven, running thence, up the said branch, to its source; thence, nearly north in a straight line, to the mouth of East Savannah River; thence, up the St. Louis River, to the mouth of East Swan River; thence, up said river, to its source; thence, in a straight line, to the most westwardly bend of Vermillion River; thence, northwestwardly, in a straight line, to the first and most considerable bend in the Big Fork River; thence, down said river, to its mouth; thence, down Rainy Lake River, to the mouth of Black River; thence, up that river, to its source; thence in a straight line, to the northern extremity of Turtle Lake; thence, in a straight line, to the mouth of Wild Rice River; thence, up Red River of the North, to the mouth of Buffalo River; thence, in a straight line, to the southwestern extremity of Otter-Tail Lake; thence, through said lake, to the source of Leaf River; thence down said river, to its junction with Crow Wing River; thence down Crow Wing River, to its junction with the Mississippi River; thence to the commencement on said river of the southern boundary-line of the Chippewa country, as established by the treaty of July twenty-ninth, one thousand eight hundred and thirty-seven; and thence, along said line, to the place of beginning. And the said Indians do further fully and entirely relinquish and convey to the United States, any and all right, title, and interest, of whatsoever nature the same may be, which they may now have in, and to any other lands in the Territory of Minnesota or elsewhere.

ARTICLE 2. There shall be, and hereby is, reserved and set apart, a sufficient quantity of land for the permanent homes of the said Indians; the lands so reserved and set apart, to be in separate tracts, as follows, viz:

For the Mississippi bands of Chippewa Indians: The first to embrace the following fractional township, viz: forty-two north, of range twenty-five West; forty-two north, of range twenty-six west; and forty-two and forty-three north, of range twenty-seven west; and, also, the three islands in the southern part of Mille Lac. Second, beginning at the point half a mile east of Rabbit Lake; thence south three miles; thence westwardly, in a straight line, to a point three miles south of the mouth of Rabbit River; thence north to the mouth of said river; thence up the Mississippi River to a point directly north of the place of beginning; thence south to the place of beginning. Third, beginning at a point half a mile south-

west from the most southwestwardly point of Cull Lake; thence due south to Crow Wing River; thence down said river, to the Mississippi River; thence up said river to Long Lake Portage; thence, in a straight line, to the head of Gull Lake; thence in a southwestwardly direction, as nearly in a direct line as practicable but at no point thereof, at a less distance than half a mile from said lake, to the place of beginning. Fourth, the boundaries to be, as nearly as practicable, at right angles, and so as to embrace within them Pokagomon Lake; but nowhere to approach nearer said lake than half a mile therefrom. Fifth, beginning at the mouth of Sandy Lake River; thence south, to a point on an east and west line, two miles south of the most southern point of Sandy Lake; thence east, to a point due south from the mouth of West Savannah River; thence north, to the mouth of said river; thence north to a point on an east and west line, one mile north of the most northern point of Sandy Lake; thence west, to Little Rice River; thence down said river to Sandy Lake River; and thence down said river to the place of beginning. Sixth, to include all the islands in Rice Lake, and also half a section of land on said lake, to include the present gardens of the Indians. Seventh, one section of land for Pug-o-na-ke-shick, or Hole-in-the-day, to include his house and farm; and for which he shall receive a patent in fee-simple.

For the Pillager and Lake Winnibigoshish bands, to be in three tracts, to be located and bounded as follows, viz: First, beginning at mouth of Little Boy River; thence up said river to Lake Hassler; thence through the center of said lake to its western extremity; thence in a direct line to the most southern point of Leech Lake; and thence through said lake, so as to include all the islands therein, to the place of beginning. Second, beginning at the point where the Mississippi River leaves Lake Winnibigoshish; thence north, to the head of the first river; thence west, by the head of the next river, to the head of the third river, emptying into said lake; thence down the latter to said lake; and thence in a direct line to the place of beginning. Third, beginning

at the mouth of Turtle River; thence up said river to the first lake; thence east, four miles; thence southwardly, in a line parallel with Turtle River, to Cass Lake; and thence, so as to include all the islands in said lake, to the place of beginning; all of which said tracts shall be distinctly designated on the plats of the public surveys.

And at such time or times as the President may deem it advisable for the interests and welfare of said Indians, or any of them, he shall cause the said reservation, or such portion or portions thereof as may be necessary, to be surveyed; and assign to each head of a family, or single person over twenty-one years of age, a reasonable quantity of land, in one body, not to exceed eighty acres in any case, for his or their separate use; and he may, at his discretion, as the occupants thereof become capable of managing their business and affairs, issue patents to them for the tracts so assigned to them, respectively; said tracts to be exempt from taxation, levy, sale, or feiture; and not to be aliened or leased for a longer period then two years, at one time, until otherwise provided by the legislature of the State in which they may be situate, with the assent of Congress. They shall not be sold, or alienated, in fee, for a period of five years after the date of the patents; and then without the assent of the President of the United States being first obtained. Prior to the issue of the patents, the President shall make such rules and regulations as he may deem necessary and expedient, respecting the disposition of any of said tracts in case of the death of the person or persons to whom they may be assigned, so that the same shall be secured to the families of such deceased person; and should any of the Indians to whom tracts may be assigned thereafter abandon them, the President may make such rules and regulations, in relation to such abandoned tracts, as in his judgment may be necessary and proper.

ARTICLE 3. In consideration of, and in full compensation for, the cessions made by the said Mississippi, Pillager, and Lake Winnibigoshish bands of Chippewa

Indians, in the first article of this agreement, the United States hereby agree and stipulate to pay, expend, and make provision for, the said bands of Indians, as follows, viz: For the Mississippi bands:

Ten thousand dollars ($10,000) in goods and other useful articles, as soon as practicable after the ratification of this instrument, and after an appropriation shall be made by Congress therefore, to be turned over to the delegates and chiefs for distribution among their people.

Fifty thousand dollars ($50,000) to enable them to adjust and settle their present engagements, so far as the same, on an examination thereof may be found and decided to be valid and just by the chiefs, subject to the approval of the Secretary of the Interior; and any balance remaining of said sum not required for the above-mentioned purpose shall be paid over to said Indians in the same manner as their annuity money, and in such installments as the said Secretary may determine; Provided, That an amount not exceeding ten thousand dollars ($10,000) of the above sum shall be paid to such full and mixed bloods as the chiefs may direct, for services rendered heretofore to their bands.

Twenty thousand dollars ($20,000) per annum, in money, for twenty years, provided, that two thousand dollars ($2,000) per annum of that sum, shall be paid or expended, as the chiefs may request, for purposes of utility connected with the improvement and welfare of said Indians, subject to the approval of the Secretary of the Interior.

Five thousand dollars ($5,000) for the construction of a road from the mouth of Rum River to Mille Lac, to be expended under the direction of the Commissioner of Indian Affairs.

A reasonable quantity of land, to be determined by the Commissioner of Indian Affairs, to be ploughed and prepared for cultivation in suitable fields, at each of the reservations of the said bands, not exceeding, in the aggregate, three hundred acres for all the reservations, the Indians to make the rails and inclose the fields themselves.

For the Pillager and Lake Winnibigoshish bands:

Ten thousand dollars ($10,000) in goods, and other useful articles, as soon as practicable, after the ratification of this agreement, and an appropriation shall be made by Congress therefore; to be turned over to the chiefs and delegates for distribution among their people.

Forty thousand dollars ($40,000) to enable them to adjust and settle their present engagements, so far as the same, on an examination thereof may be found and decided to be valid and just by the chiefs, subject to the approval of the Secretary of the Interior; and any balance remaining of said sum, not required for that purpose, shall be paid over to said Indians, in the same manner as their annuity money, and in such installments as the said Secretary may determine; provided that an amount, not exceeding ten thousand dollars ($10,000) of the above sum shall be paid to such mixed-bloods as the chiefs may direct for services heretofore rendered to their bands.

Ten thousand six hundred and sixty-six dollars and sixty-six cents ($10,666.66) per annum, for thirty years.

Eight thousand dollars ($8,000) per annum, for thirty years, in such goods as may be requested by the chiefs, and as may be suitable for the Indians, according to their condition and circumstances.

Four thousand dollars ($4,000) per annum, for thirty years, to be paid or expended, as the chiefs may request, for purposes of utility connected with the improvement and welfare of said Indians; subject to the approval of the Secretary of the Interior: Provided, That an amount not exceeding two thousand dollars thereof, shall, for a limited number of years, be expended under the direction of the Commissioner of Indian Affairs, for provisions, seeds, and such other articles or things as may be useful in agricultural pursuits.

Such sum as can be usefully and beneficially applied by the United States annually, for twenty years, and not to exceed three thousand dollars, in any one year, for purposes of education; to be expended under the direction of the Secretary of the Interior.

Three hundred dollars' ($300) worth of powder, per annum, for five years.

One hundred dollars' ($100) worth shot and lead, per annum, for five years.

One hundred dollars' ($100) worth of gilling twine, per annum, for five years.

One hundred dollars' ($100) worth of tobacco, per annum, for five years.

Hire of three laborers at Leech Lake, of two at Lake Winnibigoshish and of one at Cass Lake, for Five years.

Expense of two blacksmiths, with the necessary shop, iron, steel, and tools for fifteen years.

Two hundred dollars ($200) in brubbing-hoes and tools, the present year.

Fifteen thousand dollars ($15,000) for opening a road from Crow Wing to Leech Lake; to be expended under the direction of the Commissioner of Indian Affairs.

To have ploughed and prepared for cultivation, two hundred acres of land in ten or more lots, within the reservation at Leech Lake; fifty acres, in four or more lots, within the reservation at Lake Winibigoshish; and twenty-five acres, in two or more lots within the reservation at Cass Lake; Provided, That the Indians shall make the rails and inclose the lots themselves.

A saw-mill, with a portable gris mill attached thereto, to be established whenever the same shall be deemed necessary and advisable by the Commissioner of Indian Affairs, at such point as he shall think best; and which, together, with the expense of a proper person to take charge of and operate them, shall be continued during ten years: Provided That the cost of all the requisite repairs of the said mills shall be paid by the Indians, out of their own funds.

ARTICLE 4. The Mississippi bands have expressed a desire to be permitted to employ their own farmers, mechanics, and teachers; and it is therefore agreed that the amounts to which they are now entitled, under former treaties, for purposes of education, for blacksmiths and assistants, shops, tools, iron and steel, and for the em-

ployment of farmers and carpenters, shall be paid over to them as their annuities are paid: Provided, however, That whenever, in the opinion of the Commissioner of Indian Affairs, they fail to make proper provision for the above-named purposes, he may retain said amounts, and appropriate them according to his discretion, for their education and improvement.

ARTICLE 5. The foregoing annuities, in money and goods, shall be paid and distributed as follows: Those due the Mississippi bands, at one of their reservations; and those due the Pillager and Lake Winnibigoshish bands, at Leech Lake; and no part of the said annuities shall ever be taken or applied, in any manner, to or for the payment of the debts or obligations of Indians contracted in their private dealings, as individuals, whether to traders or other persons. And should any of said Indians become intemperate or abandoned, and waste their property, the President may withhold any moneys or goods due and payable to such, and cause the same to be expended, applied, or distributed, so as to insure the benefit thereof to their families. If, at any time, before the said annuities in money and goods of either of the Indian parties to this convention shall expire, the interests and welfare of said Indians shall, in the opinion of the President, require a different arrangement, he shall have the power to cause the said annuities, instead of being paid over and distributed to the Indians, to be expended or applied to such purposes or objects as may be best calculated to promote their improvement and civilization.

ARTICLE 6. The missionaries and such other persons as are now, by authority of law, residing in the country ceded by the first article of this agreement, shall each have the privilege of entering one hundred and sixty acres of the said ceded lands, at one dollar and twenty-five cents per acre; said entries not to be made so as to interfere, in any manner, with the laying off of the several reservation herein provided for.

And such of the mixed bloods as are heads of families, and now have actual residences and improvements in

the ceded country, shall have granted them, in fee, eighty acres of land to include their respective improvements.

ARTICLE 7. The laws which have been or may be enacted by Congress, regulating trade and intercourse with the Indian tribes, to continue and be in force within the several reservations provided for herein; and those portions of said laws which prohibit the introduction, manufacture, use of, and traffic in ardent spirits wines, or other liquors, in the Indian country, shall continue and be in force, within the entire boundaries of the country herein ceded to the United States, until otherwise provided by Congress.

ARTICLE 8. All roads and highways, authorized by law, the lines of which shall be laid through any of the reservations provided for in this convention, shall have the right of way through the same; the fair and just value of such right being paid to the Indians therefore; to be assessed and determined according to the laws in force for the appropriation of lands for such purposes.

ARTICLE 9. The said bands of Indians, jointly and severally, obligate and bind themselves not to commit any depredations or wrong upon other Indians, or upon citizens of the United States; to conduct themselves at all times in a peaceable and orderly manner; to submit all difficulties between them and other Indians to the President, and to abide by his decision in regard to the same, and to respect and observe the laws of the United States, so far as the same are to them applicable. And they also stipulate that they will settle down in the peaceful pursuits of life, commence the cultivation of the soil, and appropriate their means to the erection of houses, opening farms, the education of their children and such other objects of improvement and convenience, as are incident to well-regulated society; and that they will abstain from the use of intoxicating drinks and other vices to which they have been addicted.

ARTICLE 10. This instrument shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and the Senate of the United States.

In testimony whereof the said George W. Manypenny, commissioner as aforesaid, and the said chiefs and delegates of the Mississippi, Pillager and Lake Winnibigshish bands of Chippewa Indians have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

George W. Manypenny, commissioner.

Tug-o-na-ke-shik, or Hole in the Day, his x mark.

Que-we-sans ish, or Bad Boy, his x mark.

Waud-e-kaw, or Little Hill, his x mark.

I-awe-showe-we-ke-shig, or Crossing Sky, his x mark.

Petud-dunce, or Rat's Liver, his x mark.

Mun-o-min-e-kay-shein, or Rice Maker, his x mark.

Aish-ke-bug-e-koshe, or Flat Mouth his x mark.

Be-sheck-kee, or Buffalo, his x mark.

Nay-bun-a-caush, or Young Man's Son, his x mark.

May-yah-ge-way-we-durg, or the Chorister, his x mark.

Kay-gwa-daush, or the Attempter, his x mark.

Cay-cang-e-we-gwan, or Crow Feather, his x mark.

Show-baush-king, or He That Passeth Under Everything, his x mark.

Chiefs and delegates of the Pillager and Lake Winnibigoshish bands

Executed in the presence of—

Henry M. Rice
Geo. Culver.
D. B. Herriman, Indian agent.
J. E. Fletcher.
John Dowling.
T. A. Warren, United States interpreter.
Paul H. Beaulieu, interpreter.
Edward Ashman, interpreter.
C. H. Beaulieu, interpreter.
Peter Roy, interpreter.
Will P. Rosse, Cherokee Nation
Riley Keys.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Washington 25, D.C.

June 26, 1953

My dear Mr. Miller:

This will refer to your request for a report on H.R. 1063, a bill "To amend title 18, United States Code, entitled 'Crimes and Criminal Procedure', with respect to State jurisdiction over offenses committed by or against Indians in the Indian country, and to confer on the State of California civil jurisdiction over Indians in the State".

I recommend that this bill be enacted if its title and text are amended to conform to the enclosed draft.

The bill would extend the criminal laws of the State of California to all the Indian country within that State. Concurrently, it would withdraw the entire State from the operation of the Federal Indian liquor laws. Finally, it would permit the courts of the State of California to adjudicate civil controversies of any nature affecting Indians within the State, except where trust or restricted property is involved.

Approximately 30,000 Indians live in the State of California. They are divided into many different groups, widely dispersed throughout the State. Their lands include a large number of small rancherias and allotments, which are also widely scattered. The State lacks jurisdiction to prosecute Indians for most offenses committed on Indian reservations or other Indian country as defined in title 18, United States Code, section 1151, except in the case of the Agua Caliente Indian Reservation. State criminal jurisdiction over this one reservation was conferred by the Act of October 5, 1949 (63 Stat. 705.)

The applicability of Federal criminal laws is also limited. The United States district courts have a measure of jurisdiction over offenses committed on Indian reservations or other Indian country by or against In-

dians, but in cases of offenses committed by Indians against Indians that jurisdiction is limited to the so-called ten major crimes listed in section 1153 of title 18, United States Code. As a practical matter, the enforcement of law and order among Indians in the Indian country has been left largely to the Indian groups themselves, and in California they are not adequately organized to perform that function. The Indians of the Hoopa Valley Reservation and the Yuma Reservation have a form of tribal law enforcement, but none of the other reservations in the State has any means of preserving law and order. Consequently, there is a serious hiatus in law enforcement authority that can best be remedied by conferring criminal jurisdiction on the State. The Indians of California have also reached a stage that makes desirable the extension of State civil jurisdiction to the Indian country in that State. This has already been accomplished on the Agua Caliente Indian Reservation by the Act of October 5, 1949 (63 Stat. 705). A likely policy should be applied to the rest of the State. In doing so due regard should be given, of course, to the safeguarding of the rights guaranteed the Indians by Federal treaties, agreements, and statutes.

At the direction of the Commissioner of Indian Affairs, the Area Director of the Bureau of Indian Affairs at Sacramento, California, consulted with the various Indian groups on a legislative proposal similar to H.R. 1063. No opposition to the enactment of the proposed legislation was voiced by any of the Indian groups. The Hoopa Valley Indians, comprising the largest single group within the State, have adopted resolutions favoring the proposal to confer civil and criminal jurisdiction on the State. Representatives of other groups have also indicated their approval.

Proposed legislation similar to H.R. 1063 has been discussed with the Governor of California and he has indicated his approval of the objective of the proposal. The Legislature of California, by Senate Joint Resolution No. 29, has recently memorialized the Congress to enact H.R. 1063.

The revisions incorporated in the enclosed draft would clarify the intent of the civil jurisdiction provisions in several particulars. They would make it clear that the effect of the bill would be, not merely to permit the State courts to adjudicate civil controversies arising on Indian reservations in California, but also to extend to those reservations the substantive civil laws of the State insofar as these laws are of general application to private persons or private property. The revision would also make it clear that Indian tribal customs and ordinances would continue to be applicable to civil transactions among the Indians insofar as these customs or ordinances are not inconsistent with the applicable State laws. By so doing the predominance of State authority would be assured, but with a minimum of interference with Indian control of Indian affairs.

The enclosed draft is designed to perfect H.R. 1063 in a manner consistent with its basic intent. The only major substantive difference is the omission of the provisions that would have excluded the entire State from the Operation of the Federal Indian liquor laws. There is no doubt that the Indians of California are as prepared to be subjected to the other laws of the State. However, general legislation to repeal, in whole or in part, the Indian liquor laws is now before the Congress, and it seems preferable to deal with the subject in that manner rather than in a bill, such as H.R. 1063, having a different primary objective.

In large measure the criminal jurisdiction provisions of the enclosed draft are identical with those of H.R. 1063. The subsection that would have reserved to the Federal courts concurrent jurisdiction over offenses by or against Indians has been omitted as its effect would be to make persons in the Indian country subject to two different, and possibly conflicting, systems of law. For like reasons, a subsection has been added that would render inapplicable in California the Federal criminal laws which apply to offenses committed by or against Indians within the Indian country. Finally, the subsection relating to the protection of trust or restricted Indian property and of Indian fishing and hunting rights

has been revised in an effort to make its provisions as precise and certain as possible.

The provisions of the enclosed draft relating to civil jurisdiction are based on those of H.R. 1063, but have been recast in a form that would permit them to be incorporated in the general body of the judicial laws as now codified in title 28 of the United States Code. These provisions are designed to give the State of California jurisdiction over civil controversies and transactions involving Indians to the fullest extent consistent with the discharge of Federal responsibility for the protection of trust or restricted property. The State and its courts could not take any action that would affect the status of this property in any way or that would improperly deprive the Indians of any of the benefits therefrom. However, once the trust or restriction was terminated by the United States, the jurisdiction of the State and its courts would automatically attach.

Both H.R. 1063 and the enclosed draft would repeal section 1 of the Act of October 5, 1949 (63 Stat. 705), which conferred on the State of California civil and criminal jurisdiction over the land and residents of the Aqua Caliente Indian Reservation. The enactment of H.R. 1063, applicable to the entire State, should be accompanied by the repeal of section 1 of this Act in order to make the same civil and criminal jurisdictional statute applicable to all Indian country within the State.

Since I am informed that there is a particularly urgency for the submission of the views of the Department, this report has not been cleared through the Bureau of the Budget and, therefore, no commitment can be made

concerning the relationship of the views expressed herein to the program of the President.

Sincerely yours,

Orme Lewis
Assistant Secretary of the Interior

Hon. A. L. Miller, Chairman
Committee on Interior and Insular Affairs
House of Representatives
Washington 25, D. C.
Enclosure

SUPREME COURT OF THE UNITED STATES

No. 75-5027

RUSSELL BRYAN, ETC., PETITIONER

v.

ITASCA COUNTY, MINNESOTA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

November 3, 1975

Mr. Justice Douglas took no part in the consideration or decision of this petition.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 598390 142

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-5027

RUSSELL BRYAN, INDIVIDUALLY and
On Behalf of all Other Persons
Similarly Situated,

Petitioner,

vs.

ITASCA COUNTY, MINNESOTA,

Respondent.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Minnesota

BRIEF FOR RESPONDENT IN OPPOSITION

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On Petition For A Writ of Certiorari
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BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The Opinion of the Minnesota Supreme Court is reported at ___ Minn. ___, 228 N.W. 2d 249 (1975).

JURISDICTION

Petitioner, in his Petition for Writ of Certiorari, has sought to invoke the jurisdiction of this Court under 28 U.S.C. § 1257 (3).

QUESTION PRESENTED

Does Public Law 83-280, 18 U.S.C. § 1162, and 28 U.S.C. § 1360, confer upon Itasca County, a political subdivision of the State of Minnesota, the power to impose a personal property tax on an enrolled Chippewa Indian with respect to a mobile home owned and occupied by him and located inside the Leech Lake Indian Reservation, on land being held in trust for the Chippewa Tribe by the United States?

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The pertinent provisions of the United States Constitution and the statutes involved are adequately set forth in the Petition at pages 3-13.

STATEMENT OF THE CASE

The facts of this case have been stipulated to and are not in dispute. Russell Bryan, an enrolled member of the Minnesota Chippewa Tribe, owns a mobile home which is located inside the Leech Lake Indian Reservation on land held in trust by the United States not for him but for his tribe. Mobile homes are taxable as class 2A personal property in Minnesota pursuant to Minn. St. §§ 168.012, subd. 9, 272.01, subd. 1, and 273.13, subd. 3 (1971). In accordance with this statutory authority, Itasca County assessed a personal property tax liability totaling $147.95 against Bryan for the years 1971 and 1972.

On September 11, 1973, Bryan commenced an action in Minnesota District Court against Itasca County and the State of Minnesota seeking both declaratory and injunctive relief against the assessment and collection of such tax. On July 29, 1973, the State of Minnesota was dismissed from the action. On December 8, 1973, the District Court held that the State of Minnesota and its political subdivisions have the power to tax Indians within the Leech Lake Reservation and consequently awarded judgment in favor of defendant Itasca County for the full amount of the tax.

On February 13, 1974, Petitioner appealed from this judgment to the Minnesota Supreme Court. On March 28, 1975, the Minnesota Supreme Court affirmed the decision of the District Court.

Petitioner is now seeking a Writ of Certiorari from this Court to review the judgment of the Minnesota Supreme Court.

ARGUMENT

Why The Writ Should Be Denied

I.

There Is No Conflict Between The Decision Of The Minnesota Supreme Court On This Issue And The Decisions Of Any Other Court.

This Court, in exercising its discretion as to whether or not to grant review of a case on writ of certiorari, has

usually looked to several factors. One of the most important of these factors has been the presence of a conflict of decisions among the lower courts. Supreme Court Rule 19; MacGregor v. Westinghouse Co., 329 U.S. 402, 67 S.Ct. 421, 91 L.Ed. 380 (1946); Sanchez v. Borras, 283 U.S. 798, 51 S.Ct. 490, 75 L.Ed. 1421 (1930).

In this case no such conflict of decisions exists. In fact, every reported state and federal opinion on the issue raised in this case has come down squarely in favor of the position that Public Law 280 specifically grants the states named therein the power to impose taxes, not otherwise prohibited, within the Indian country described therein.

It should not be surprising that such a uniformity exists in the decisions. The language of Public Law 280 is so clear that it should not be subject to a charge of vagueness concerning the taxation powers granted to the states within Indian country. Without going deeply into the merits of the case at hand, it is enough to say that Public Law 280, 28 U.S.C. § 1360 (a) clearly states that ". . . those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory: . . ." After this broad and plenary grant of power Congress went on in paragraph (b) of the same section to

prohibit the states from taxing certain property ". . . that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; . . ." This language alone makes it obvious that Congress intended to grant those states named in the Act full power to enforce all their civil laws, revenue and otherwise, except for those expressly prohibited by paragraph (b). When this language is read in conjunction with the other sections of Public Law 280, notably 18 U.S.C. § 1162, and the legislative history surrounding the passage of Public Law 280, the preceding conclusion can only be reinforced.

The decision of the Minnesota Supreme Court in this case is that Public Law 280 grants to the State of Minnesota and its political subdivisions the right to impose a personal property tax upon a mobile home owned and occupied by an enrolled Chippewa Indian who resides within a reservation upon land held in trust by the United States for the Chippewa tribe. The Minnesota Supreme Court was therefore not in conflict with the District Court of Minnesota which reached the same conclusion in its Memorandum dated December 8, 1973.

Neither is the Minnesota Supreme Court in conflict with the decision of the one other State Supreme Court which has passed on the issue. In Tonasket v. State of Washington, 79 Wash. 2d 607, 488 P. 2d 281 (1971), remanded from the United

States Supreme Court, 411 U.S. 451, 93 S.Ct. 1941, 36 L.Ed. 2d 385 (1973) and reconsidered in 84 Wash. 2d 164, 525 P. 2d 744 (1974); appeal dismissed ___ U.S. ___, 95 S.Ct. 1108, 43 L.Ed. 2d 387 (1975), the Supreme Court of Washington faced the question of whether an Indian tribe or its members, after accepting the criminal and civil jurisdiction of a state pursuant to Public Law 280, were subject to that state's power to tax the sale of cigarettes within the reservation boundaries by an Indian seller to nonreservation customers. In its first opinion that court held that the authorization given to the state by Public Law 280, was plenary, subject only to the limitations expressed therein, and that the authorization included the power to levy excise taxes upon the sale of cigarettes by Indians within the reservation. This holding was not disturbed by either this Court in its remand, or by the Washington Supreme Court in its second opinion.

The one federal court case in which the issue here involved was faced was Omaha Tribe of Indians v. Peters, 516 F. 2d 133 (8th Cir., 1975), in which the Eighth Circuit affirmed the decision of the Federal District Court for the District of Nebraska reported in 382 F. Supp. 421 (D. Neb., 1974). The issue in that case was whether Public Law 280 granted a state the power to levy a state income tax upon the income derived by an Indian from employment on a

reservation. The District Court, reasoning from both the text of the statute and from its legislative history, held in the affirmative.

Petitioner, in his Petition for a Writ of Certiorari, has attempted to show that there is a "judicial battle" (Petitioner's Brief, p. 29) among the lower courts of this land over the proper construction of Public Law 280's language regarding state power to tax Indians. This is simply not the case. Every court, state or federal, trial or appellate, which has passed on the question has uniformly agreed with the Supreme Court of Minnesota that Public Law 280 does grant to certain states the power to impose taxes, not otherwise prohibited, on certain Indians.

Petitioner has also attempted to show in his petition that a number of lower courts are "currently struggling with" the same issue presented by this case. (Petitioner's Brief, p. 28). However, he can only cite two currently pending cases to support this proposition. Wildcat et.al. v. Adamany et.al., No. 74C226 (currently before the Federal District Court for the Western District of Wisconsin) and Quileute Indian Tribes et.al. v. State of Washington, No. Civ. 747619 (currently before the Federal District Court for the Western District of Washington). The existence of these two cases does not indicate a "struggle" involving numerous courts; and it certainly does nothing at all to establish

the proposition that some court might in the future disagree with the Minnesota Supreme Court's decision in Bryan v. Itasca County.

Even if these currently pending cases were to be decided differently from the decision in this case, that would only show that the split among the lower courts is just now beginning to grow. If such a split in the decisions is about to occur, this Court should wait until all the verdicts are in before itself reviewing the issue. Only then can it have the inestimable aid of fully reasoned opinions supporting the different judicial conclusions. It should be noted that the only Federal Circuit Court to rule on this issue so far has been the Eighth Circuit. By not granting a writ of certiorari in Bryan v. Itasca County, and instead waiting for the question to ripen, this Court may soon have the benefit of the opinions of the Seventh Circuit (Wildcat et.al. v. Adamany, supra) and of the Ninth Circuit (Quileute Indian Tribes, supra).

II.

There Is No Conflict Between The Decision Of The Minnesota Supreme Court On This Issue And The Decisions Of The United States Supreme Court.

This Court has never directly decided the issue presented by Bryan v. Itasca County. Indeed, in the recent case of McClanahan v. State Tax Commission of Arizona, 411

U.S. 164, 93 S.Ct. 1257, 36 L.Ed. 2d 129 (1973), this Court (in footnote 18 to the Opinion) specifically refused to express its views on the question. Therefore, there can be no conflict at all between the Minnesota Supreme Court in the case at hand and this Court's previous decisions.

If anything, this Court has already expressed a view that Public Law 280 so clearly grants to certain states the power to tax certain Indians, that no important federal question is raised when a State Supreme Court adopts such a construction. This conclusion is based on this Court's dismissal of an appeal from the second 'Tonasket' opinion. In that case the Washington Supreme Court reaffirmed its original holding that Public Law 280 granted the State of Washington authority to extend its civil excise tax laws to Indian retailers, who serve non-Indian consumers, within an Indian reservation. An appeal from this decision was dismissed by this Court for want of a substantial federal question. Tonasket v. State of Washington, 84 Wash. 2d 164, 525 P. 2d 744, appeal dismissed, ___ U.S. ___, 95 S.Ct. 1108, 43 L.Ed. 2d 387 (1975).

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

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BRIEF FOR THE PETITIONER

OPINION BELOW

The Opinion of the Minnesota Supreme Court is reported at ___ Minn. ___, 228 N.W.2d 249 (1975). (App. p. 36).

JURISDICTION

The judgment of the Minnesota Supreme Court was entered on April 10, 1975 (App. 49). This was the final decision in this case by the Minnesota courts. A petition for writ of certiorari and motion to proceed *in forma pauperis* were filed July 7, 1975. The motion and petition were granted on November 3, 1975. The jurisdiction of this Court rests on 28 U.S.C. Section 1257(3).

QUESTION PRESENTED

1. Whether Public Law 83-280 conferred on the State of Minnesota or its political subdivisions the power to impose a personal property tax on the mobile home of an enrolled Chippewa Indian located on land held in trust by the United States for the Chippewa Indians on the Leech Lake Indian Reservation in Minnesota.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDERS AND REGULATIONS INVOLVED

The relevant Constitutional provisions, statutes, orders and regulations are as follows:

A. *Federal*

1. The U.S. Const. Art. I, Sec. 8, Cl. 3:
"To regulate commerce with foreign nations and among the several states and with the Indian tribes;"

2. The Treaty of February 22, 1855, (10 Stat. 1165) between the United States of America and the Mississippi, Pillager and Winnibigoshish bands of Chippewa Indians. (App. p. 58).

3. Public Law 83-280, 67 Stat. 583, 18 U.S.C.A. §1162 and 28 U.S.C.A. §1360 provides:

§1162. State jurisdiction over offenses committed by or against Indians in Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended

California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty agreement or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

§1360. State Civil Jurisdiction in Actions to Which Indians Are Parties

(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the Territory
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

B. *State*

1. Article Twelve, Section 3 of the Restructured Constitution of Minnesota, adopted November 5, 1974 provides:

Local government; Legislation affecting

The legislature may provide by law for the creation, organization, administration, consolidation, division and dissolution of local government units and their functions, for the change of boundaries thereof, for their elective and appointive officers including qualifications for office and for the transfer of county seats. A county boundary may not be changed or county seat transferred until approved in each county affected by a majority of the voters voting on the question.

2. Minn. Stat. §272.01(1) provides:

Property subject to taxation

Subdivision 1. All real and personal property in this state, and all personal property of persons residing therein, including the property of corporations, banks, banking companies, and bankers, is taxable, except Indian lands and such other property as is by law exempt from taxation.

3. Minn. Stat. §275.07(2) provides:

Subdivision 2. County purposes. There shall be levied annually on each dollar of taxable property, except such as is by law otherwise taxable, as assessed and entered on the tax lists for county purposes, such amount as is levied by the county board.

4. Minn. Stat. §§275.09(1) and (2) provide:

Subdivision 1. State purposes. There shall be levied annually on each dollar of taxable property, except such as is by law otherwise taxable, as assessed and entered on the tax lists, for state purposes taxes in such amount as is levied by the legislature.

Subdivision 2. County purposes. There shall be levied annually on each dollar of taxable property, except such as is by law otherwise taxable, as assessed and entered on the tax lists for county purposes, such amount as is levied by the county board.

5. Minn. Stat. §168.012(9) provides:

Subdivision 9. Mobile homes shall not be taxed as motor vehicles using the public streets and highways and shall be exempt from the motor vehicle tax provisions of this chapter. Mobile homes shall be taxed

as personal property. The provisions of Minnesota Statutes 1957, Section 272.02 or any other act providing for tax exemption shall be inapplicable to mobile homes, except such mobile homes as are held by a licensed dealer and exempted as inventory. House trailers not used on the highway during any calendar year shall be taxed as mobile homes if occupied as human dwelling places.

6. Minn. Stat. §273.13(3) (Class 2a) provides:

Class 2a. All mobile homes, as defined in section 168.011 subdivision 8, shall constitute class 2a and shall be valued and assessed at 40 percent of the full and true value thereof. The valuation of class 2a property shall be subject to review as are other property values. The county treasurer shall mail to the taxpayer a statement of the tax due, determined by applying the rate of levy of the preceding year, not later than August 1 in the year of assessment. All unpaid taxes on mobile homes shall be deemed delinquent on September 1 in the year of assessment, and thereupon a penalty of eight percent shall attach and be charged upon all such taxes. Failure to timely pay the tax hereunder shall be treated in all respects as a default in payment of the personal property tax and shall be subject to all procedures and penalties applicable hereto.

7. Minn. Stat. §168.011(8) provides:

Subdivision 8. Mobile home and house trailer. (a) "Mobile home" means any trailer or semi-trailer which is designed, constructed, and equipped for use as a human dwelling place, living abode, or living quarters except house trailers.

STATEMENT OF THE CASE

The facts in this case have been stipulated to and are not in dispute. Russell Bryan is an enrolled member of the Minnesota Chippewa Tribe. Russell Bryan lives with his wife and family in a mobile home which is located on property held by the United States of America in trust for the Chippewa Tribe of Minnesota on the Leech Lake Indian Reservation. Land so held by the United States government is commonly known as tribal trust land.

During October, 1971, Russell Bryan had his mobile home placed on his assigned tribal trust property at Squaw Lake, Minnesota. This mobile home is connected to sewer, water and electricity. In June, 1972, he received notice from the Itasca County Auditor that, pursuant to Minn. Stat. 168.012(8), as amended by laws 1961, Ch. 340, he had been assessed a tax liability for two months of 1971, amounting to $29.85 for his mobile home. On June 20, 1972, Bryan was notified by the Itasca County Treasurer that a tax of $118.10 had been assessed on his trailer for 1972.

On September 11, 1972, an action was commenced by Russell Bryan and all others similarly situated against Itasca County and the State of Minnesota seeking a declaratory judgment declaring the levying and collection of such taxes were not authorized by Congress and therefore contrary to federal law.

The case was heard by Judge James F. Murphy on March 15, 1973. On July 27, 1973, the Court ordered the State of Minnesota dismissed from the lawsuit. On December 8, 1973, the Court entered its Judgment and Decree awarding a judgment against the plaintiff in the

amount of $147.95. The Minnesota Supreme Court affirmed the entry of judgment in an opinion issued on March 28, 1975 and judgment was entered by that court on April 10, 1975. See Appendix pp. 36 and 49.

On July 7, 1975 petitioner filed a petition for a writ of certiorari and motion to proceed *in forma pauperis* with the United States Supreme Court. On November 3, 1975 the Court granted the motion to proceed *in forma pauperis* and the petition for a writ of certiorari.

SUMMARY OF ARGUMENT

A. Plaintiff, Russell Bryan is an enrolled member of the Leech Lake Indian Reservation, one of the bands of the Minnesota Chippewa Tribe. The Minnesota Chippewa Tribe was organized and recognized as an Indian tribe by the United States pursuant to the Indian Reorganization Act, 25 U.S.C. §§476, 477. This Court has clearly recognized that Indian tribes, such as the Minnesota Chippewa Tribe are "unique aggregations possessing attributes of sovereignty over their members and their territory." And although sovereignty is not the sole determining factor to be applied in interpreting applicable treaties and federal statutes the concept of sovereignty has been recognized by this Court as providing a "backdrop against which" such enactments must be construed. This Court is now requested to apply this underlying principle as a guide to ultimately conclude that Public Law 280 does not confer upon the State of Minnesota the power to impose a personal property tax upon plaintiff's mobile home which is situated upon Chippewa tribal trust property.

B. Public Law 280 clearly did not confer upon the State of Minnesota the power to impose a comprehensive system of taxation over reservation Indians. This Court has repeatedly held that Congress must explicitly convey taxing authority to a state in order to effectively deprive Indians of their historic tax immunities. No such explicit language can be found in Public Law 280. Rather, a careful examination of the language and legislative intent behind Public Law 280 reveals that the conferral of civil jurisdiction authorized the State of Minnesota only to use its courts and existing body of "civil laws" to resolve private disputes between individuals on Indian reservations.

1. An examination of the background of Public Law 280 reveals that it was designed to preserve the special federal-Indian relationship while at the same time resolving civil disputes between individuals on Indian reservations. As the federal district courts are empowered with subject matter jurisdiction to resolve civil disputes involving amounts in controversy over $10,000 between citizens of different states, Public Law 280 empowers the courts of Minnesota with subject matter jurisdiction to resolve "civil causes of action" involving Indians arising on Indian reservations. The limited scope of the civil jurisdiction conferred can be most clearly perceived by comparing Public Law 280 with the contemporaneous termination acts enacted by the same 83rd Congress which unlike Public Law 280 made use of explicit language to confer specific taxing authority in each individual enactment separate from and in addition to provisions conferring general civil jurisdiction. Further, the language used by Congress in 28 U.S.C. §§1360(b) and (c) strongly supports the

proposition that the established policy of preserving tribal governmental authority and the essential characteristics of the federal trust relationship was to be continued while conferring such limited civil jurisdiction.

2. The conferral of civil jurisdiction upon the states was designed to provide a benefit to reservation Indians by making available a body of existing state civil laws previously unavailable for the resolution of civil conflicts between Indians on reservations. While Congress was initially concerned with resolving the serious problem of the lack of an adequate criminal justice system on certain Indian reservations in drafting Public Law 280 a similar concern soon evolved regarding the increasing number of civil disputes arising out of private relationships which were also being inadequately resolved. It made sense, therefore, to at the same time assist the reservation Indians in providing a means to resolve civil causes of action, particularly where a ready-made body of state law could be made immediately available.

In providing a means of resolving private civil disputes Congress intended "civil laws . . . of general application" to mean those laws which have to do with "private" rights and responsibilities. Congress did not intend, however, to confer to the states the uniquely sovereign power to raise revenue which cannot be included within the normal meaning of "private" laws.

This Court has in past decisions specifically construed the provisions of Public Law 280 conferring civil jurisdiction on the states as meaning jurisdiction to deal with "civil causes of action." And in other decisions this Court has adopted a strict "tax jurisdiction" standard which prohibits the inferral of state taxing

authority not specifically authorized. Such inferring of special taxing powers from general conferral language is even more difficult to justify when Public Law 280 is read *in pari materia* with the contemporaneous termination legislation as this Court has instructed be done.

3. Rather than destroying reservation Indian tax immunity, as the Minnesota Supreme Court surprisingly and ironically concludes 28 U.S.C. §1360(b) does, both 28 U.S.C. §§1360(b) and (c) preserve reservation Indian tax immunity which is an attribute of the longstanding federal-Indian trust relationship.

The failure to specifically protect non-trust property tax immunities or provide protection specifically for every conceivable reservation Indian tax immunity in section (b) is easily explained by recognizing that the scope of such tax immunity was not yet fully explored at the time it was enacted and that all of the significant cases dealing with such immunities were litigated after the enactment of Public Law 280. If, as the Minnesota Supreme Court concluded, Congress had intended that all non-trust property tax immunities be destroyed by the enactment of section (b), those provisions would have evoked discussion within Congress and opposition from the Indian tribes. However, because Congress is enacting section (b) intended to assuage any concerns that might arise regarding the loss of Indian tax immunities, no such congressional discussion was evoked, nor were any fears expressed by the Indian tribes. Explicit recognition by Congress that for the most part Indians do not pay any taxes both during the hearings preceding the passage of Public Law 280 and in 1961 during the Senate Judiciary's hearings on the

constitutional rights of Indians gives further support to this view of Congress' continuing intent to maintain normal Indian tax immunity status.

Indeed, the provisions of section (b) itself make impermissible any attempt to regulate the use of tribal trust property. And it is submitted that the State of Minnesota by imposing the particular tax here challenged is in direct violation of this provision.

Finally, the Minnesota Supreme Court ignores the obvious intent of section (c) which made clear that reservation Indians would continue to exercise their sovereign powers of tribal self-government consistent with the purposes of the Indian Reorganization Act and the ongoing Congressional policies of self-determination.

C. The conferral of civil jurisdiction in Public Law 280 must be construed in a manner consistent with the body of congressional acts carrying forth the federal trust relationship. Some of the enactments which are relevant are described as follows.

The Indian Reorganization Act, 25 U.S.C. §§475, 476, 477, was designed to strengthen the Indian tribes powers of self-government. Crucial to this purpose was the need to empower the tribes with the authority to make decisions as to whether or not to tax its members. A dual system of taxation would frustrate this purpose.

The Indian Financing Act, 88 Stat. 77, §2, Public Law 93-262, likewise demands a construction of Public Law 280 consistent with its provisions and purposes. Accordingly, the channeling of federal finances through the Indian tribes and into the hands of state authorities would substantially frustrate federal efforts to help develop and utilize Indian resources.

Neither must this Court's interpretation of the Buck Act, 4 U.S.C. §§104 et seq., so as to recognize the limitations on state taxing authority be ignored.

As has been previously pointed out Public Law 280 must also be read *in pari materia* with the body of separate but contemporaneous termination congressional enactments.

Finally, Public Law 280 must be construed consistently with the Indian Trading Statutes, 25 U.S.C. §§261, 262. The Minnesota Supreme Court decision violates the intent and purpose of these statutes when it encourages taxes on all reservation Indians except those who have secured a federal traders license.

D. It has been emphasized that Public Law 280 does not confer taxing power expressly. Neither should its provisions be construed to have made such a conferral by implication. This Court in its decisions has consistently rejected the idea of repealing by implication statutes and treaties creating or preserving Indian rights. The rule of construction which has long been followed is that such enactments and treaties must be construed in favor of the Indian beneficiaries. What was intended, understood and consented to by the Indians has been and should continue to be controlling. A silent and backhanded extinguishment of Indian treaty rights and historically recognized tax immunities cannot reasonably have been intended by Congress or consented to by the Indians. Thus, the right of the Leech Lake Reservation Indians to the preservation of their tax immunity status ought to prevail and be applied to disallow the tax here challenged.

BACKGROUND AND INTRODUCTION

The Leech Lake Indian Reservation is located in North Central Minnesota and consists of 588,684 acres of land occupying portions of Itasca, Cass, Beltrami and Hubbard counties. The reservation was created by treaty in 1855 (10 Stat. 1165). In return for the cession of large tracts of land to the United States, the Leech Lake Indian Reservation was created "for the permanent homes of the Chippewa Indians" Art. III, 10 Stat. at 1166 (App. p. 59). Today most of the land on the reservation is owned by the federal government with the Chippewa National Forest occupying the largest portion of the land. The land, generally swampy and unsuitable for agriculture, includes many lakes including Cass, Leech, and Winnibigoshish. According to the 1970 Census, 2795 members of the Leech Lake Band live within or adjacent to the reservation, many of whom hunt and fish for their sustenance.[1]

Russell Bryan is a member of the Leech Lake Band of the Minnesota Chippewa Tribe. The Minnesota Chippewa Tribe was organized and recognized as an Indian tribe by the United States pursuant to the Indian Reorganization Act, the Act of June 18, 1934, 25 U.S.C. §§476, 477. The tribe operates under a Federal Charter of Incorporation, which was issued by the Secretary of the Interior in 1934 and ratified by the tribe in 1937.[2] The Minnesota Chippewa Tribe is a

[1]See Leech Lake Band of Chippewa Indians v. Herbst, 334 F.Supp. 1001 (D. Minn. 1971).

[2]In addition to that Charter, the Tribe operates under a revised constitution and by-laws as amended and approved by the Secretary of the Interior on March 3, 1964.

self-governing Indian tribe. It is governed by representatives elected by each of its member reservations. It administers numerous Indian programs in the area of health, education and welfare which are federally and tribally funded. It also leases and controls the use of its trust land in cooperation with the Department of Interior.

Twenty-three years before the Leech Lake Indian Reservation was created, Justice Marshall wrote this Court's landmark decision in *Worcester v. Georgia*, 6 Pet. 515 (1832), and found Indian tribes to be "distinct political communities, having territorial boundaries, within which their authority is exclusive." 6 Pet. 515, 557. While the status of Indian tribes has undergone many changes since 1832, it is still clear that Indian tribes, like the Minnesota Chippewa Tribe "are unique aggregations possessing attributes of sovereignty over their members and their territory." *United States v. Mazurie*, 419 U.S. 544, 557 (1975).

As distinct political bodies with attributes of sovereignty, Indian tribes have long had problems in their relationship with the states in which they are located. In resolving questions concerning the extent of state jurisdiction over Indian tribes, this Court has indicated as recently as 1973 in *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973) that the sovereignty of Indian tribes, while no longer the sole determining factor, must still be considered "because it provides a backdrop against which the applicable treaties and federal statutes must be read." 411 U.S. at 172.

Generally, states have no power over reservation Indians other than that which Congress specifically

grants them. *Williams v. Lee*, 358 U.S. 217 (1959). In *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973) this Court made it clear that only Congress can authorize state taxation over reservation Indians:

> "* * * in the special area of the state taxation, absent cession of jurisdiction or other federal statutes permitting it, there has been no satisfactory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation, and *McClanahan v. Arizona State Tax Commission, supra*, lays to rest any doubt in this respect by holding that such taxation is not permissible absent congressional consent." 411 U.S. at 148.

Furthermore, in *McClanahan* this Court stated:

> . . . Similarly, narrower statutes authorizing States to assert tax jurisdiction over reservations in *special situations* are explicable only if Congress assumed that the States lacked the power to impose the taxes without special authorization. (Emphasis supplied.)

411 U.S. at 177. (Footnote omitted.)

In *McClanahan* this Court ruled that the State of Arizona had not been granted authority by the Congress to impose its income tax on income earned by Rosalind McClanahan, a Navajo Indian who resided on the Navajo Reservation. The only difference between the State of Arizona's attempt to tax Rosalind McClanahan's income and the State of Minnesota's efforts to tax Russell Bryan's personal property is that Congress conferred criminal and civil jurisdiction over Indian country on the State of Minnesota pursuant to Public Law 280.[3] The task of this Court, therefore, is

[3]Act of August 15, 1953, Ch. 505, 67 Stat. 588-90, 18 U.S.C. §1162 and 28 U.S.C. §1360.

to determine whether the conferral of civil jurisdiction in Public Law 280 constitutes a congressional grant of state tax authority empowering Minnesota to tax Indians located on Public Law 280 reservations where it could not tax Indians located on a non-Public Law 280 reservation.[4] In resolving this issue this Court will have to examine the Act and its legislative history to determine whether Public Law 280 authorizes new state taxing power over reservation Indians in a manner consistent with the decisions in *Mescalero* and *McClanahan*.

Public Law 280, 28 U.S.C. §1360, is a statute conferring subject matter jurisdiction on state courts over civil causes of action affecting Indians which arise in Indian country. In this respect it is like laws passed by Congress authorizing subject matter jurisdiction in federal courts. For example, 28 U.S.C. §1332 confers subject matter jurisdiction on the United States District Courts for all civil actions where the matter in controversy exceeds $10,000 and the dispute is between citizens of different states. Congress not only conferred subject matter jurisdiction in diversity cases but also determined what laws the parties should look to once they brought their case into the federal courts:

> The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

28 U.S.C. §1652.[5] Similarly, in Public Law 280

[4]This Court expressly reserved this very question in McClanahan, 411 U.S. at 178, n. 18.

[5]This Court in Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938) ruled that the law of the several states included both statutory law and decisional law, concluding that there was no federal common law to be applied in diversity actions.

Congress provided that once the parties brought their civil causes of action to the state courts, state laws of general application to private persons or private property (28 U.S.C. §1360(a)) and tribal ordinances not inconsistent with these state laws (28 U.S.C. §1360(c)) would apply.

Given this fact that Public Law 280 is a statute whose legislative history and language indicate that its sole purpose was to confer subject matter jurisdiction on state courts it is difficult to justify the Minnesota Supreme Court's ruling that the conferral of subject matter jurisdiction also contained authority for the states to assert their tax statutes against reservation Indians. Certainly no one has ever seriously argued that 28 U.S.C. §1332 granted the United States the authority not only to assert subject matter jurisdiction in diversity cases, but also its other sovereign powers, especially the power to tax state citizens.

A careful reading of the Minnesota decision indicates that the court found state taxing authority by relying on section (b) of the Act, rather than on section (a), the section which confers civil jurisdiction. Section (b) is the only portion of the Act which mentions taxation, indeed it and section (c) were inserted to reassure Indians that the grant of civil cause of action jurisdiction in section (a) was not intended to grant the states any sovereign power over the federal Indian relationship or the right of reservation Indians to organize tribal governments. It is a bitter irony to the Indians to have the Minnesota Supreme Court, twenty-two years after the passage of Public Law 280, look to the protective provisions of section (b) to sustain the assertion of state taxing power when it

could not sustain the tax under the conferral of civil jurisdiction language found in section (a).[6]

In Part I of this brief we will show that Public Law 280 was enacted for a limited purpose–namely to improve the apparatus for resolving criminal and civil disputes affecting reservation Indians. We will show that the background of the statute as well as the precise language utilized by Congress reveals a careful congressional plan to preserve intact for Public Law 280 reservations the basic structure of both the federal Indian trust relationship and the primary role of tribal self-government. Congress never intended the limited conferral of civil "cause of action" jurisdiction to terminate the Indians' time-honored right to live on their reservations and to govern themselves free from state regulation and taxation.

In Part II of this brief we will demonstrate that Minnesota's construction of Public Law 280 jeopardizes the Indians' ability to carry on their tribal relations as self-governing reservation Indians. The state's approach seriously undermines congressional enactments passed to strengthen reservation economic self-sufficiency and tribal self-government for all federally recognized Indian tribes. Since Public Law 280 did not leave Indians to be treated as if they were non-Indian citizens of the states, they are entitled to the same protections and benefits provided by federal statutes as are accorded reservation Indians generally.

Finally, in Part III we will show that time-honored rules of statutory construction mitigate against this

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[6]The United States Court of Appeals for the Eighth Circuit in Omaha Tribe v. Peters, 516 F.2d 133, cert. filed July 30, 1975, adopted similar reasoning without discussion in finding state authority to impose income taxes on Public Law 280 reservation Indians in the State of Nebraska.

Court construing Public Law 280 as having impliedly extinguished the right of reservation Indians to be free of unauthorized state taxation.

I.

PUBLIC LAW 280 DID NOT GRANT MINNESOTA THE AUTHORITY TO IMPOSE COMPREHENSIVE STATE TAXATION OVER RESERVATION INDIANS

Congress and this Court have long recognized that a cornerstone of federal Indian policy has been to leave Indian tribes free from state jurisdiction and control. *McClanahan, supra* 411 U.S. at 168. When Congress does surrender any portion of federal control over Indians to the states, it has done so only after a detailed scrutiny of the desirability of expanding state jurisdiction. *Kennerly v. District Court of Montana*, 400 U.S. 423, 424, n. 1, 427 (1971). To be effective, the surrender of Indian jurisdiction to the states must be expressed explicitly in order to override judicial interpretations that favor the preservation of federal Indian immunities. *Mattz v. Arnett*, 412 U.S. 481, 504-505 (1973); *McClanahan, supra* at 176.

In this part, we will show that Congress had a limited purpose for enacting Public Law 280—namely to shift the responsibility for adjudicating criminal and civil disputes among reservation Indians from undermanned tribal governments to the states. Congress in Public Law 280 did not intend to dismantle the special relationship between the United States and the tribes or to extinguish the unique rights accorded by federal Indian

status. To the contrary, the legislative history as well as the language of the statute distinguish it from the contemporaneous termination acts passed by Congress to extinguish the federal status of selected Indian tribes in order to have terminated Indians treated like all other state citizens.

A. The Background of Public Law 280 Shows That it Was Designed to Preserve the Indian's Special Relationship With the United States While Improving the System for Resolving Reservation Disputes.

The limited scope of federal jurisdiction conveyed to the states in Public Law 280 can best be ascertained by comparing the statute with the contemporaneous termination acts enacted by the same 83rd Congress. In 1952, the House of Representatives, by resolution, ordered its Committee on Interior and Insular Affairs to investigate the Bureau of Indian Affairs and determine how that agency had evaluated the qualifications of Indian groups and tribes to manage their own affairs without further Federal supervision. H. R. Res. 698, 82d Cong., 2d Sess. (1952). The House Interior Committee responded, recommending a policy of assimilation of Indians into the Nation's social and economic life. H. Rep. No. 2503, 82d Cong., 2d Sess. 124 (1952). Congress expressed this termination policy most concretely in 1953 in House Concurrent Resolution 108, 67 Stat. B132 (1953):

> [I]t is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same

> laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship. . . .[7]

This resolution was passed August 1, 1953, two weeks before Public Law 280 was enacted. Pursuant to this directive Congress enacted separate acts which expressly terminated the federal relationship with such tribes, among others as the Klamaths, the Utes, the Western Oregon tribes, the Paiutes, the Wyandottes, the Menominee and the Poncas. 25 U.S.C. §§564, 677, 691, 721, 741, 791, 821, 841, 891, 971 (1970).

In each of these statutes Congress provided:

> Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians and . . . all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, *and the laws of the several states shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.* (Emphasis supplied.)
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> 25 U.S.C. §§564q; 677(v); 703; 726; 757; 803; 823(a); 848; 899; 980.

In Public Law 280 Congress utilized a far different approach to deal with a far different problem.[8] Instead

[7]H. Cong. Res. 108, 83rd Congress, 1st Sess. (1953). H. Rept. No. 841; S. Rept. No. 794.

[8]For a helpful discussion of the background of Public Law 280 as well as the problems raised by the Act, *see* Note, *The Extension of County Jurisdiction Over Indian Reservations in California: Public Law 280 and the Ninth Circuit*, 25 Hastings L. J. 1451 (1974); C. Goldberg, *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians*, 22 U.C.L.A. L. Rev. 535 (1975).

of providing that all laws of the States shall apply to the tribe and its members in the same manner as they apply to other citizens, Congress provided that each of the states shall have jurisdiction over civil causes of action to which Indians are parties and that those civil laws of the state that are of general application to private persons on private property shall have the same force and effect within Indian country as they have elsewhere. As we shall show Congress selected the latter phrasing to grant to the states only the power to use their courts and their substantive laws to resolve civil disputes arising on the reservation. In contrast, in the termination acts, Congress intended to accomplish precisely what the acts state, namely to have all state laws apply to the terminated Indians in the same manner as all state laws apply to non-Indian citizens.

In an important recent decision of the Court of Appeals for the Ninth Circuit, *Santa Rosa Band of Indians v. Kings County*, Civ. No. 74-1565 (9th Cir., decided Nov. 3, 1975) the court confirmed that Public Law 280 was designed to accomplish only a limited transfer of authority.

> "* * * Congress, recognizing that most Indian tribes living on restricted lands in 1953 were economically or educationally unprepared for termination, undertook a more gradual process; Public Law 280 is only a part of that process. The statute shifted jurisdiction over Indian Country from the Federal government to the states in some

> respects, but in others prolonged existing Federal supervision and Indian immunity from state jurisdiction, awaiting the decision by Congress, on a case-by-case basis, that termination of a particular tribe, with consequent imposition of all aspects of state jurisdiction, was appropriate."[9]
>
> Slip Opinion, pp. 11, 12

Moreover, whereas a separate termination act was enacted for each tribe, Public Law 280 was designed to be available for all tribes wherever located. The Act thus not only affects Indian tribes who have in the past been made subject to its provisions but also all other states and tribes who may in the future elect, pursuant to the authority contained in 25 U.S.C. §1322 (1970), to submit their members' disputes to state courts in order to facilitate resolution of reservation conflicts.

Furthermore, whereas the termination acts were designed to extinguish federal supervision as well as the federal Indian relationship, and to have terminated Indians treated as if they were non-Indian citizens of the states, Public Law 280 was designed to deal with only a narrow aspect of the federal Indian relationship by transferring to the states the responsibility for resolving criminal and civil conflicts among reservation Indians where to do so would benefit the tribes or their members. Thus Congress was careful to preserve primary tribal governmental authority over reservation Indians:

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[9]Santa Rosa, supra, represents the first careful analysis of the jurisdictional aspects of Public Law 280 by a federal court in the twenty-two years since the passage of the Act. We believe that this important Ninth Circuit case should be given careful consideration by the Court. We have lodged with the Clerk of the Court copies of the Santa Rosa opinion.

> Any legislation in this area should be on a general basis, making provision for all affected States to come within its terms; that the attitude of the various States and the Indian groups within those States on the jurisdiction transfer question should be heavily weighed before effecting transfer; and that any recommended legislation should retain application of Indian tribal customs and ordinances to civil transactions among the Indians, insofar as these customs or ordinances are not inconsistent with applicable State laws.

The following tribes, each of which has a tribal law and order organization functioning in a reasonably satisfactory manner, have advised Bureau officials of their objections to State jurisdiction, and their reservation areas have therefore been excepted in the transfer legislation: Red Lake Band of Chippewa Indians of Minnesota, Warm Springs Tribe of Oregon, and the Menominee Tribe of Wisconsin.[10]

Not only did Congress preserve tribal governmental authority, but the entire federal Indian relationship was held intact, because Public Law 280 was designed to transfer *only* limited criminal and civil conflict resolution jurisdiction to the States:

> As a practical matter, the enforcement of law and order among the Indians in the Indian country has been left largely to the Indian groups themselves. In many States, tribes are not adequately organized to perform that function; consequently, there has been created a hiatus in law-enforcement authority that could best be remedied by conferring criminal jurisdiction on States indicating an ability and willingness to accept such responsibility.

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[10]S. Rep. No. 699, 83rd Cong., 1st Sess. 5, 6 (1953).

> Similarly, the Indians of several States have reached a stage of acculturation and development that makes desirable extension of State civil jurisdiction to the Indian country within their borders. Permitting the State courts to adjudicate civil controversies arising on Indian reservations, and to extend to those reservations the substantive civil laws of the respective States insofar as those laws are of general application to private persons or private property, is deemed desirable.[11]

Furthermore, an examination of the language utilized in Public Law 280 will confirm that Congress preserved the essential characteristics of the federal trust relationship as well as important attributes of tribal self-government when conveying to the states the authority to bring their criminal justice system and their courts to the aid of reservation Indians.

B. The Conferral of Civil Jurisdiction was Designed to Bring to Reservation Indians Access to the State Courts and Access to the Body of State Law Required to Resolve Civil Conflicts.

Public Law 280 is entitled "An Act [t]o confer jurisdiction . . . (on certain states) with respect to criminal offenses *and civil causes of action* committed or arising on Indian reservations within such States . . ." (Emphasis supplied). As to civil jurisdiction, the Act provides that a named state shall have "jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in . . . Indian country . . . to the same extent that such State . . . has jurisdiction over other civil causes of action, and those civil laws of such State . . . that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State . . ."

[11]S. Rep. No. 699, 83rd Cong., 1st Sess. 6.

On its face the law is designed to give state courts subject matter jurisdiction to hear civil suits regarding causes of action that arise on reservations and to declare that laws of general application to private persons or private property shall apply in such suits. The legislative history suggests that in Public Law 280 Congress was primarily concerned with improving the criminal justice systems on the reservations. Civil jurisdiction was extended as an afterthought, presumably on the theory that once state courts and state law were made available to settle criminal disputes on the reservation they should likewise be made available to settle civil disputes arising out of private relationships.[12]

The Senate Report on the bill indicates the primary concern of Congress at the time was lawlessness on the reservation. S. Rept. No. 699, 83rd Cong., 1st Sess. 5 (1953). The criminal justice system was in a state of chaos. If a non-Indian committed a crime against another non-Indian or a crime without an apparent victim, such as drunk driving, only state authorities could prosecute him under state law. *See United States v. McBratney*, 104 U.S. 621, 624 (1882). But if either the offender or victim was Indian, the United States

[12]This view of the civil aspects of Public Law 280 has recently been adopted by the Ninth Circuit in Santa Rosa, supra. Slip opinion p. 8.

had exclusive jurisdiction to prosecute applying state law in many instances in federal court either under the "Major Crimes Act," 18 U.S.C. §1153 or the Assimilated Crimes Acts, 18 U.S.C. §1152, 18 U.S.C. §7 and 18 U.S.C. §13 (1970). Otherwise, tribal courts had exclusive jurisdiction since federal law enforcement was typically neither well financed nor vigorous. *See* the Statement of Representative D'Ewart in *Hearings on H.R. 459, H.R. 3235 and H.R. 3624 Before the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs on State Legal Jurisdiction in Indian Country*, 82nd Cong., 2d Sess. Ser. 11, at 14 (1952) (hereinafter cited as the 1952 Hearings).

The result, described by House Indian Affairs Subcommittee member Weslery D'Ewart, of Montana, was "[T]he complete breakdown of law and order on many of the Indian reservations. . . ." *See* 1952 Hearings, *supra* at 16.

Further indication that Congress was primarily concerned with the problems of improving the criminal justice system on the reservations is the fact that several predecessor bills offered the status criminal jurisdiction only. H.R. 459, H.R. 3235, H.R. 3624, 82nd Cong., 2d Sess. (1952). Moreover, as noted above, Public Law 280 itself exempted several reservations completely from state jurisdiction solely because they had legal systems and organizations functioning in a reasonably satisfactory manner. Senate Report No. 699, *supra* at 6. It is against this background emphasizing the need to improve the resolution of criminal disputes, that the civil portion of Public Law 280 must be read. Once state courts were granted jurisdiction over criminal matters, it made sense to extend that jurisdiction to cover private civil disputes also arising on the

reservation.

Thus, Congress utilized the phrase "civil laws . . . of general application to private persons or private property" not to authorize states to impose their vast powers of revenue raising, as urged by the states, but rather to clarify what laws would apply once the state civil processes were invoked. The phrase "civil laws" was inserted after the conferral of civil jurisdiction to make it clear that Indians and non-Indians could rely on state "civil laws . . . of general application to private persons or private property" when they invoked the jurisdiction of state courts.

Congress' concern for clarifying what might be called the "choice of law" question is demonstrated by the inclusion in Public Law 280 of paragraph (c) which not only recognized the continuing right of reservation Indians to govern themselves, but also provided that the parties could look to tribal laws not inconsistent with state civil laws to resolve their private conflicts in the state court proceedings. 28 U.S.C. §1360(c).

Tribal courts could not provide a forum for resolving the increasing number of civil disputes arising among Indians and non-Indians residing on or doing business on the reservations. On some reservations an Indian involved in an automobile accident or seeking a divorce or desiring to enforce a contract had no forum from which to obtain a resolution of his problems. The tribal court systems were simply inadequate. Moreover, the state courts had very limited jurisdiction.[13] So Congress

[13]For example, state courts have been found without jurisdiction to enforce sales taxes on reservation lands (Your Food Stores, Inc. v. Village Espanola, 68 N.M. 327, 261 P.2d 950 (1961), *cert. denied*, 368 U.S. 915 (1961)), to hear tort actions arising on the reservation against reservation Indians

in Public Law 280 allowed Indians to go to state courts and provided them with a ready-made body of state law to look to in resolving their private civil disputes. Congress intended "civil laws . . . of general application" to mean those laws which have to do with private rights and status. Therefore, "civil laws . . . of general application to private persons or private property" would include the laws of contract, tort, marriage, divorce, insanity, descent and similar matters, but would not include laws declaring or implementing the states' sovereign powers, such as the unique power to raise revenue. The latter are not within the normal meaning of "private" laws.

A comparison of the Public Law 280 language with that used in the termination acts again reveals the limited nature of Congress' grant in the former statute. Thus, while Congress made *all* state laws applicable to both tribes and their members in the termination acts, in Public Law 280 it authorized state jurisdiction only over those civil causes of action affecting private persons or private property on Indian reservations. Tribes were conspicuously left out of the conferral of jurisdiction in section (a) although included in sections (b) and (c). This is not surprising since it would have been wholly inappropriate to have tribes resolve their disputes in state courts. Indeed, in 1966, thirteen years after Public Law 280, Congress enacted 28 U.S.C.

(Valdez v. Johnson, 68 N.M. 476, 362 P.2d 1004 (1961); Sigana v. Bailey, 282 Minn. 367, 164 N.W.2d 886 (1969); Smith v. Temple, 82 S.D. 650, 152 N.W.2d 547 (1967)), to hear divorce actions between reservation Indians (Whyte v. District Court, 140 Colo. 334, 346 P.2d 1012 (1959), *cert. denied*, 363 U.S. 829 (1960)), and to hear dependency petitions against reservation Indian parents (State ex rel. Adams v. Superior Court, 57 Wash.2d 181, 356 P.2d 985 (1960)).

§1362 which provided special federal court jurisdiction for tribal controversies. However, if Congress intended Public Law 280 to confer comprehensive taxing authority, as is urged by the state there is no logical reason why they would have spared the tribal organizations but not tribal members, particularly where many business activities undertaken on the reservation are sponsored by the tribes.

This reading of Public Law 280–that Congress inserted the phrase "civil laws" to clarify the role of state and tribal laws in private civil disputes which occurred once subject matter jurisdiction passed to the state–is supported by this Court's construction of Public Law 280 in *Kennerly v. District Court of Montana*, 400 U.S. 423 (1971). There the Court referred to Public Law 280 as an "extension of state jurisdiction over civil causes of action by or against Indians arising in Indian country" and to certain 1968 amendments as "a new regulatory scheme for the extension of state civil and criminal jurisdiction to litigation involving Indians arising in Indian country." 400 U.S. at 428. It is also in line with the construction given Public Law 280 in *Warren Trading Post v. Arizona Tax Commission*, 380 U.S. 685, 687, n. 3 (1965), where the Court stated:

> Certain state laws have been permitted to apply to activities on Indian reservations, where those laws are *specifically* authorized by acts of Congress, or where they clearly do not interfere with federal policies concerning the reservations . . . 18 U.S.C. §1162 (1958 ed.) and 28 U.S.C. §1360 (1958 ed.) (respectively granting certain states criminal and civil jurisdiction over offenses and *causes of action* involving Indians within specified Indian reservations). (Emphasis supplied.)

Significantly, Congress itself has also characterized Public Law 280 as only conferring the power to resolve private civil controversies. Thus in the 1968 amendment to Public Law 280 which required the states to obtain Indian consent to any new state jurisdiction, Congress stated:

> State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or *civil causes of action*, or with respect to both, shall be applicable to Indian country only where the enrolled Indians within the affected area of Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. (Emphasis supplied.)[14]

Because the words of the Act are directed toward resolving civil controversies occurring among reservation Indians and nowhere mentions the state's taxing authority, a power to tax must necessarily be implied from the statute's grant of general civil jurisdiction. Inferring taxing authority over Indians in this manner, however, does violence to the strict "tax jurisdiction" standard referred to in *McClanahan* and *Mescalero*, and is also inconsistent with the pattern of congressional acts which have provided the states with new taxing powers.[15]

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[14]Public Law 90-284, §406, 82 Stat. 80, 25 U.S.C. §1326 (1970).

[15]In a number of statutes creating national recreational areas out of lands previously under mixed federal and state jurisdiction, Congress granted separately a general authority for the states to assert civil and criminal jurisdiction and a special authority for the states to impose state taxes. See 16 U.S.C. §16n-6, 16 U.S.C. §§459(i)(6), 460(b)(8), 460(z)(12). Similarly, in the Buck Act, 4 U.S.C. §§104-110, 61 Stat. 641, Congress expressly granted the states the power to impose gasoline taxes on Indian reservations by providing the states with a special taxing authority, and not simply with a grant of general civil jurisdiction.

Furthermore, inferring special taxing powers from the general conferral language is particularly difficult to justify in this situation because as we have shown the very same Congress which enacted Public Law 280 also passed a series of statutes terminating the Indian status and reservations of such tribes as the Klamath, Ute, Western Oregon, Paiute, Wyandotte, Menominee, and Ponca. In these acts providing for termination of the tribes and distribution of tribal property, Congress provided both that "the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens" (25 U.S.C. §§564q, 677v, 703, 757, 803, 899, 980), and that "such property and any income derived therefrom by the individual . . . shall be subject to the same taxes, State and Federal, as in the case of non-Indians. . . ." (25 U.S.C. §§564j, 677p, 699, 749, 798, 898, 978.) This Court in *Menominee Tribe v. United States*, 391 U.S. 404 (1968) has instructed that Public Law 280 and the coincident termination legislation cited above must be read *in pari materia*. In *Menominee* this Court put Public Law 280 side-by-side with the Menominee Termination Act and found that section (b) in Public Law 280 preserved tribal hunting and fishing treaty rights. In this case when Public Law 280 is read side-by-side with the termination acts, which by their very terms extinguished all aspects of federal Indian status, subjected the terminated Indians to the general laws of the states in the same manner as non-Indians, and expressly exposed the distributed property and income of the terminated Indians to state taxation, it becomes apparent that the grant of civil jurisdiction in Public Law 280 dealt solely with resolving private civil disputes, and had nothing to do with authorizing new state taxing power.

C. Congress Protected the Indian Immunity from State Taxation by Inserting in 28 U.S.C. § § 1360(b) and (c) Provisions Preserving Both the Federal Indian Trust Relationship and Powers of Tribal Self-Government.

We have shown that the 83rd Congress selected two different legislative approaches–a termination of all aspects of the federal Indian relationship and a limited conferral of criminal and civil jurisdiction to solve the separate problems confronting those tribes which desired to be relieved of their federal wardship status and those tribes which merely sought state assistance in improving the mechanisms of justice on their reservations. Congress carefully selected broad all-inclusive language to terminate tribes, and narrow, limited language to assist tribes seeking to improve the resolution of their members criminal and civil disputes.

It is not surprising then that the Minnesota Supreme Court was unable to sustain Minnesota's property tax by relying on the conferral of civil jurisdiction language found in section (a); 28 U.S.C. §1360(a). But what is surprising, and indeed very disturbing, is that the Minnesota Court relied on section (b); 28 U.S.C. §1360(b), to sustain the state property tax when there is every reason to believe that section (b) was inserted for the very purpose of assuaging Indian fears that Public Law 280 would extinguish unique federal rights accorded reservation Indian status.[16]

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[16]Congress preserved basic fundamentals of the federal Indian relationship in section (b) and preserved the authority of reservation Indians to exercise the powers of self-government in section (c); 28 U.S.C. §1360(c). That Public Law 280 was designed to achieve a distribution of jurisdiction among the tribes, the states and the federal government and not a wholesale elimination of the federal Indian relationship is exhaustively discussed in Santa Rosa Band of Indians v. Kings County, supra, slip opinion, pp. 9-12.

Congress included in section (b) an enumeration of those rights which form the basis for the federal Indian trust relationship.

> (b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.[17]

(1) The legislative history suggests that Congress did not disturb the tax protections of Reservation Indians

The Minnesota Supreme Court reasoned that since section (b) provides that states cannot tax trust property, they can tax everything else. The legislative history, however, suggests just the opposite. That is, because some tribes feared that Public Law 280 "would

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[17]28 U.S.C. §1360(b); 18 U.S.C. §1162(b).

result in the loss of various rights,"[18] section (b) was included to reassure them that there would be no change in those rights as a result of Public Law 280. An exchange between Congressman D'Ewart of Montana and Mr. Sellery, Chief Counsel for the Bureau of Indian Affairs, during the hearings on Public Law 280 lends support for this theory. Congressman D'Ewart asked Mr. Sellery whether the bill protected Indian treaty rights and tribal estates. Mr. Sellery reassured him by quoting from the exception clause.

A second colloquy involving Mr. Sellery of the Bureau of Indian Affairs provides further evidence that Congress did not intend section (b) to grant unlimited revenue authority to the states by carving out for protection only taxes associated with trust property. Thus, in response to a question from Congressman Young of Nevada raised during the hearings before the House Subcommittee on Indian Affairs as to whether Public Law 280 would subsidize the states through federal payment or increased state taxing authority, Mr. Sellery stated:

> "Mr. Sellery..... Generally, the Department's views are that if we started on the process of Federal financial assistance or subsidization of law enforcement activities among the Indians, it might turn out to be a rather costly program, and it is a problem which the states should deal with and accept without Federal financial assistance; otherwise there will be some tendency, the Department believes, for the Indian to be thought of and perhaps to think of himself because of the

[18]House Report No. 848, 83rd Congress, 1st Sess. (July 16, 1953).

> financial assistance which comes from the Federal Government as still somewhat a member of a race or group which is set apart from other citizens of the State. And it is desired to give him and the other citizens of the State the feeling of a conviction that he is in the same status and has access to the same services, including the courts, as other citizens of the State who are not Indians.
>
> Mr. Young. That would not quite be true, though; would it? Because *for the most part he does not pay any taxes.*
>
> Mr. Sellery. *No. There is that difference.*
>
> Mr. Young. A rather sizable difference is not paying for the courts or paying for the increased expenses for judicial proceedings.
>
> Mr. Sellery. The Indians, of course, do pay other forms of taxes. I do not know how the courts of Nevada are supported financially, but the Indians do pay the sales tax and other taxes.[19]

[19]The reference to sales tax at this point indicates, in our view, the degree of uncertainty that surrounded the question of non-trust property taxation in 1953. Under the Buck Act, 4 U.S.C. §109, Indians were not subjected to state sales and income taxation permitted on federal enclaves by sections 105 and 106 of that Act. It is further unclear from the above exchange whether sales taxes for on or off reservation transactions are being discussed. Moreover, it was not until McClanahan, supra and Mescalero, supra, were decided that this Court clearly enunciated the on and off reservation differences with respect to state taxation. See Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148-49 (1973). Even those state courts which passed on the question before this Court did so after the passage of Public Law 280. See cases cited at footnote 2, McClanahan v. Arizona State Tax Commission, 411 U.S. 164, 165 (1973). We believe that whatever the state of the law was in 1953 with respect to state taxation of reservation Indians, the legislative history compels the conclusion that Congress did not attempt to change or alter it through passage of Public Law 280. See ante. pp. 27-28 for a fuller discussion of the case law developments after 1953.

Mr. Young. But no income tax or corporation tax or profits tax. You understand a large portion of the land is held in trust and therefore is not subject to tax.

Mr. Sellery. That is correct.

Mr. Young. So far as my state is concerned, it would be a large burden on existing costs of judicial procedure. I think it is only right that the Federal Government should make some contribution for that. You seem to differentiate. I think there is a differentiation, too, in that they are not paying taxes.

Mr. Sellery. I will concede your point that they are not paying taxes. The Department has recommended, nevertheless, that no financial assistance be afforded to the States." (Subcommittee Hearings on H.R. 1063, P. 8, 18, p. 10, 15, Emphasis supplied.) App. 55-56.[20]

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[20]Also instructive on this question is an exchange that took place in 1961, eight years after the passage of Public Law 280, between Senator Ervin and Senator Case of South Dakota during hearings concerning Public Law 280 on the Constitutional Rights of the American Indian before Senator Ervin's Subcommittee on Constitutional Rights of the Senate Judiciary Committee:

SENATOR ERVIN: Is that true even if a State under the recent act of Congress assumed first jurisdiction over a reservation?

SENATOR CASE: I think that would be true. *The assumption of jurisdiction* (under Public Law 280) *would not repeal or change the tax laws.*

SENATOR ERVIN: The result is such as assumption of full jurisdiction by a State would impose upon the counties in which the reservation is located additional burdens, not only from the standpoint of enforcement of the law; but from the standpoint of finances.

SENATOR CASE: That is true. That is the reason that counties have hesitated to accept the jurisdiction which was

These excerpts from the legislative history support the conclusion that Congress did not intend to confer taxing authority on the states when it authorized states to decide civil causes of action involving Indians. At the very least, the legislative history supports the view that Congress did not intend to disturb Indian tax immunities, whatever their status at that time. The one conclusion the legislative does *not* support is that Congress intended to change reservation Indian tax immunities by authorizing the states to apply the full panoply of their tax laws upon assumption of civil jurisdiction.

(2) Minnesota's approach to Public Law 280 ignores Congress' purpose in adding sections (b) and (c)

Contrary to the legislative history described above, and without reference to it, the Minnesota Supreme

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offered them in the law which Congress passed a few years ago. . . .

* * *

SENATOR ERVIN: That is what it is in my State. We have a State income tax also, and a State sales tax. But most of the burdens of local government do essentially rest on property tax. *When the State assumes full jurisdiction over the reservation under the recent act of Congress (Public Law 280), it gets no compensation for taxes, but it acquires additional burdens from which it has to use other tax sources which are already burdened, is that true?*

SENATOR CASE: *That is true.* (Emphasis supplied.)

See Hearings on Constitutional Rights of the American Indian Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, Pursuant to Senate Resolution 53, 87th Cong., 1st Sess., pt. 1, 136-137 (1961).

Court reads section (b) as giving Minnesota the power to impose all of its taxes on reservation Indians except those on trust property. If Congress had intended to preserve the immunity of reservation Indians from personal property taxes, income taxes, sales taxes and the like, the Minnesota Supreme Court reasoned, it would have included them in the exception clause. This reasoning assumes two things, however, which just were not true.

First, it assumes that the section (b) was inserted by Congress as a comprehensive enumeration of all those federal Indian rights which would survive the termination carried out by section (a) of Public Law 280; 28 U.S.C. §1360(a). But as we have shown Congress intended section (a) not as an open-ended grant of sovereign authority to the states, but only as a provision designed to deal with resolving private civil conflicts. Thus Congress included the phrase "civil laws of general application to private persons or private property" to provide a known body of law to be applied by the forum upon its assumption of jurisdiction. Moreover, and this is crucial to understanding the distribution of jurisdiction which took place in Public Law 280, Congress inserted section (c), in addition to inserting section (b), to make it clear that not only would the Federal Indian trust relationship survive, but also that reservation Indians would continue to exercise powers of tribal self-government. Thus, Congress made it explicit that the tribes would retain the right to govern reservation Indians. Sections (a), (b), and (c) were thus each designed to achieve a separate and complementary legislative goal.

In section (b) Congress not only protected Indian trust property from alienation, encumbrance or taxation, it also assured the Indians that their property would continue to be protected from any state regulation affecting the use of the property which would be inconsistent with *any Federal treaty, agreement, statute, or any regulation made pursuant thereto*. We submit that Minnesota's personal property tax constitutes an impermissible attempt under section (b) to regulate the use of the Chippewa's tribal trust lands. The regulation is inconsistent with both the Chippewa's treaty with the United States and federal statutes generally applicable to Indians. In *McClanahan, supra*, this Court resisted state taxation of an individual Indian's income by finding the taxation inconsistent with the protections provided Indian property and Indian reservations found in the Navajo treaty with the United States, 15 Stat. 667, and the Arizona Enabling Act, 36 Stat. 557. Similarly, in *Mescalero, supra*, the Court found a state tax on the use of tribal trust property inconsistent with the Indian Reorganization Act, 25 U.S.C. §§475, 476, 477, authorizing tribes to acquire land, and to have such land exempt from state taxation. In Part II of this Brief we will describe in greater detail the federal protections granted the Minnesota Chippewa Tribe, which were specifically preserved in section (b) and in section (c) and which we believe prohibit the assertion of the Minnesota taxes at issue in this case.

Second, the state's view that section (b) leaves Public Law 280 Indians only the remnant of trust property tax immunity assumes, we believe incorrectly, that Congress evaluated all of the Indian tax immunities and selected out for preservation only those tied to trust property. To the contrary, the failure of Congress to

specify non-trust property tax immunities can be explained by the fact that at the time of the enactment of Public Law 280 in 1953, neither the states nor Congress nor indeed this Court had begun to explore fully the scope of the Indian tax immunity not tied to trust property.[21] An examination of the significant Indian cases affecting income, sales, and tribal or business activities on reservations not related to Indian trust property reveals that all were litigated and decided after the enactment of Public Law 280. *Squire v. Capoeman*, 351 U.S. 1 (1956) (income derived from allotment is immune from federal income taxes); *Williams v. Lee*, 358 U.S. 217 (1959) (the application of state laws may not interfere with tribal sovereignty); *Warren Trading Post v. Arizona Tax Commission*, 380 U.S. 685 (1965) (states may not tax Indian businesses because Congress has occupied the field through enactment of the federal trading statutes, 25 U.S.C. §261, et seq.); *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973) (states may not tax Indian income earned on an Indian reservation absent specific congressional authorization); and *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973) (Indian tax exemptions exist for off-reservation activities only if secured by a federal statute).

Given the scope of Indian tax immunities existing at the time of the enactment of Public Law 280, section

[21]Indeed, the important Supreme Court cases dealing with Indian tax immunities decided prior to 1953 involved only trust property. The Kansas Indians, 72 U.S. (5 Wall.) 737 (1867); United States v. Rickert, 188 U.S. 432 (1903); and Choate v. Trapp, 224 U.S. 665 (1912).

(b) preserving the status of trust property from alienation and encumbrance as well as taxation can be viewed in at least two diverse ways: (a) as a congressional expression confirming the special protection for trust property secured by preexisting opinions of this Court, and by longstanding congressional legislation, i.e., the General Allotment Act, 24 Stat. 388, or (b) as a congressional determination to carve out and preserve from the conferral of general taxing power of section (a) only those tax immunities accorded by reservation Indian status which were related to trust property. However, the first alternative is the only one consonant with this Court's interpretation of Public Law 280 as being directed toward resolving civil causes of action arising on reservations for it recognizes that section (a) conferred only a state forum and a ready-made body of state law and did not grant comprehensive state taxing power. The first alternative simply confirms that in section (b) Congress was intent on alleviating Indian fears and emphasized that the Indians would continue to possess the rights, privileges, immunities, and benefits historically accorded reservation Indians (apart from the right of tribal self-government preserved in section (c)) in furtherance of the federal Indian relationship.

This reading of section (b) is supported by the circumstances surrounding the enactment of the law. During passage of Public Law 280 there was no discussion of state power to tax on the floor of the House and Senate.[22] Further, there was little opposi-

[22]See 99 Cong. Rec. 9962 (July 27, 1953); 99 Cong. Rec. 10782, 10928 (Aug. 1, 1953).

tion raised by the Indian tribes during consideration of the bill concerning the grant of general civil jurisdiction. This can only be explained by the fact that neither Congress nor the Indians felt that Public Law 280 was in any way changing the historic tax immunity of reservation Indians.

On the other hand, the second alternative, adopted by the Minnesota Supreme Court, requires that section (a) be construed to be an open-ended, but unstated, grant of state taxing authority. The second alternative also requires imputing to Congress without any direct evidence a full awareness of the complex issues surrounding the scope of the Indian tax immunity years before this Court rendered its judgments in *Warren Trading Post*, *Mescalero Apache Tribe* and *McClanahan*. Finally, reading section (b) as a congressional mandate to treat Public Law 280 Indians differently from all other federally recognized Indians by limiting their tax immunity to trust property, requires imputing to Congress the intent and the action of silently terminating an important right reserved by reservation Indians without expressly informing the Indians. We believe such a reading is inconsistent with how this Court has interpreted federal acts enacted to benefit Indians. *Menominee Tribe v. United States*, 391 U.S. 404 (1968); *Squire v. Capoeman*, 351 U.S. 1 (1956).

The recent decision of the Ninth Circuit in *Santa Rosa, supra*, casts further doubt on whether Congress intended Public Law 280 to cover taxes such as the county personal property taxes involved in this case. In *Santa Rosa* the court held that "civil laws of general application within the state" do not include county codes or ordinances. The personal property tax asserted

by Itasca County is assessed and collected for county and local purposes under the authority contained in Article II, Section 5 of the Minnesota Constitution and Minn. Stat. §275.09. As a result the property tax may not constitute a civil law of general application within the State of Minnesota and the tax would thus be invalid even if this Court were to conclude that Public Law 280 authorizes general state taxation of reservation Indians. But this result would produce extremely varied consequences nationwide. In those states where the state government imposes and collects property taxes for state and local purposes, Public Law 280 Indians would be exposed to such property taxation. Such incongruous results across the nation seem inconsistent with the clear congressional intent to make Public Law 280 civil and criminal subject matter jurisdiction available to all states and tribes that wished to make the state's judicial system available to reservation Indians. 28 U.S.C. §1360, 25 U.S.C. §1322. Whether taxing authority is included in such assumption of jurisdiction would then depend totally on the specific taxing system in operation in the state at any given time after the assumption of jurisdiction. Thus a state could gain or lose taxing authority over reservation Indians depending on whether it altered its general revenue raising structure to emphasize or limit local assessment and collection of taxes. Such a result hardly seems consistent with the intent of Public Law 280 to provide a uniform statute that could be adopted by those states and tribes desiring to make the state's judicial system available to reservation Indians.

Even when states have decided to impose taxes pursuant to Public Law 280 they have done so by

widely varying schemes. For example, California does not tax income directly derived from utilization of lands held in trust, Cal. Rev. and Tax Code §17041; 18 Cal. Admin. Code Reg. Sec. 17071(p), nor does it impose its sales tax on businesses located on trust land. In contrast Washington State taxes personal property, sales, and businesses on Indian reservations. Revenue Ruling 192, Washington Administrative Code 458-20-192 (Adopted Dec. 16, 1974). See generally the discussion of taxation of reservation Indians in Public Law 280 states found in the amicus brief of Bad River Band of Lake Superior Chippewa Indians of Wisconsin et. al, filed in support of petition for certiorari in *Omaha Tribe v. Peters*, Docket No. 75-169.

Minnesota's view of Public Law 280 results in chaotic and inconsistent treatment of reservation Indians nationally. Minnesota's view also assumes that Congress, being aware of the economic plight of the Indians, many of whom were living in grinding poverty, intended to impost upon them immediately the full panoply of state taxes. Indeed, the states themselves took more than twenty years to realize that they may have gained taxing authority by virtue of Public Law 280.

Moreover, it also seems incongruous that Congress would exempt trust land from taxes and at the same time allow states to tax Indian homes such as Russell Br an's which are located on that land merely because the state classifies such property as personal. The state's approach ascribes to Congress an intent to treat the historic wards of the United States in a casual and callous fashion, and attributes to Congress the action of protecting both the federal Indian relationship and the

inherent powers of tribal self-government with one hand while silently authorizing regulation and taxation by other governmental bodies with the other hand.

Surely, if Public Law 280 was intended by Congress to permit states to begin imposing a myriad of taxes on reservation Indians, the result of which would be to affect their very ability to live on the land set aside for their permanent homes and carry on their cultural heritage, it would have been a matter of sufficient importance to at the very least evoke discussion within Congress and some opposition from the Indian tribes concerning the wisdom of such legislation. Public Law 280 was not opposed by the affected tribes for one reason—it was designed to solve pressing problems concerning law enforcement and the lack of an adequate forum to resolve private civil disputes and nothing more.

II.

THE CONFERRAL OF CIVIL JURISDICTION FOUND IN PUBLIC LAW 280 MUST BE CONSISSTENT WITH THE CONGRESSIONAL ACTS CARRYING FORTH THE FEDERAL TRUST RELATIONSHIP

The scope of civil jurisdiction granted the states in Public Law 280 must be construed in light of congressional acts passed in furtherance of the unique federal responsibility to Indian tribes. Congress preserved these Federal Statutes for those tribes affected by Public Law 280 when in section (b) it assured the Indians that they would continue to use their

reservations as provided for in their treaties and in statutes enacted for the benefit of Indians generally. In *Santa Rosa Band of Indians v. Kings County, supra,* the Ninth Circuit construed Public Law 280 not only in light of the termination acts, but also in comparison with the Indian Reorganization Act, 25 U.S.C. §476, which was designed to strengthen the powers of tribal self-government:

> From that perspective, we conclude that Congress did not contemplate immediate transfer to local governments of civil regulatory control over reservations. Prior to passage of Public Law 280, Congress had encouraged, under §476 of the Indian Reorganization Act, the formation and exercise of tribal self-government on reservation trust lands. A construction of Public Law 280 conferring jurisdiction to local county and municipal governments would significantly undermine, if not destroy, such tribal self-government.
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> Slip Opinion, p. 11.

The Ninth Circuit's reliance on the termination acts and on the Indian Reorganization Act in its construction of Public Law 280 is consistent with this Court's construction of Indian legislation. Thus, as we have underscored (p. 22) this Court has read the termination acts *in pari materia* with Public Law 280 *Menominee Tribe v. United States,* 391 U.S. 404 (1968). Moreover this Court has looked to the Indian Reorganization Act, 25 U.S.C. §§476, 477 for guidance in protecting the right of tribal self-government from state interference, *Williams v. Lee,* 358 U.S. 217 (1959), and in protecting an off reservation Indian ski enterprise from state use taxes, *Mescalero Apache Tribe v. Jones,* 411 U.S. 145 (1973). Again in *Warren Trading Post v. Arizona Tax*

Commission, 380 U.S. 685 (1965) this Court concluded that Congress preempted the states from taxing Indian traders when it enacted federal trading statutes. 25 U.S.C. §§261, 262. Furthermore, this Court relied on the exemption from state income taxation placed in the Buck Act, 4 U.S.C. §§ 104 et seq., when it ruled that Arizona could not impose its income tax against reservation Indian income, *McClanahan v. Arizona State Tax Commission,* 411 U.S. 164, 176, 177 (1973).

An examination of these Indian statutes reveals that each continues in effect on Public Law 280 reservations. Moreover, as we have shown, in section (b) of Public Law 280, Congress assured the Indians that they would continue to enjoy the full use of their reservations under federal protections secured by treaty and federal statute. Foremost among the federal statutes which control the use of trust property are the ones analyzed in the above described decisions of this Court. The protections embodied in these Acts cannot be construed to have been impliedly eliminated by the conferral of civil jurisdiction.

A. Indian Reorganization Act.

The decision below paves the way for state intrusions in tribal sovereignty through unlimited taxation and in so doing frustrates the federal policies strengthening tribal self-government found in the Indian Reorganization Act, 25 U.S.C. §§475, 476, 477. Under tribal constitutions and charters authorized by the Indian Reorganization Act and approved by the Secretary of the Interior, tribes as independent political entities have

the power to levy their own taxes upon on-reservation incomes and businesses. To the extent that states are empowered to tax these same enterprises, the tribal taxing power is destroyed *pro tanto*. A dual system of taxation is not a political reality, for it will discourage the location of new businesses upon Indian reservations. If tribes are ever to exercise their inherent powers of self-government, they must be free to control taxation within their boundaries, and to use tax revenues for their own governmental purposes. Unless Public Law 280 is construed to have withheld state power to tax reservation Indians and enterprises, the tribes will be reduced to little more than private social clubs, a result recently rejected by this Court in *United States v. Mazurie*, 419 U.S. 544 (1975).

B. Indian Financing Act

Furthermore, the decision below, in allowing comprehensive on-reservation taxation of Indians raises a new and formidable hurdle to the accomplishment of the goal so recently enunciated by Congress in the Indian Financing Act:

> "to provide capital on a reimbursable basis to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility of the utilization and management of their own resources . . .,"[23]

Widespread state taxation will undercut special federal efforts to assist reservation Indians because it now appears that an ever-growing percentage of funds

[23]Act of April 12, 1974, 88 Stat. 77, §2. Public Law 93-262.

appropriated by Congress for Indian businesses will be sidetracked to state taxing authorities.

Nowhere in the Indian Financing Act, or indeed in any Indian legislation of general applicability has Congress created two classes of Indians; normal Indians and Public Law 280 Indians. Congress has never distinguished between Indians when either strengthening tribal powers of self-government or increasing the opportunities of tribal members to engage in economic self-determination. Indeed, in the last three fiscal years, Bureau of Indian Affairs and Indian Health Service expenditures on the six reservations of the Minnesota Chippewa Tribe subject to Public Law 280 were $1,798,700 excluding education in 1973, $1,996,200 excluding education in 1974 and $3,231,100 including education in 1975.[24] This indicates a continuing federal commitment to maintaining reservation life. In light of the protections in section (b), there is no reason to believe, therefore, that Congress considers Public Law 280 Indians as ineligible for the full range of federal legislation designed to strengthen tribal self-government and Indian economic independence. As a result we find it improper to construe Public Law 280 as in effect putting Public Law 280 reservation Indians in the same position as other citizens of the states.

C. Indian Trading Statutes

In *Warren Trading Post v. Arizona Tax Commission*, 380 U.S. 685 (1965) this Court precluded the assertion

[24]These figures were received from Area Director George Goodwin, B.I.A., and are available at the Minnesota area office of the Bureau of Indian Affairs.

of Arizona state taxes on a reservation business by deciding that Congress had preempted the field of Indian trading, leaving no room for the states to tax, when it enacted the Indian Trading Statutes, 25 U.S.C. §§261, 262. Indian businesses on Public Law 280 reservations are still subject to the federal regulation provided for in 25 U.S.C. §§261 and 262. As a result Public Law 280 states presumably could not seek to intervene to tax a reservation business which was licensed under and regulated by the federal government. Indeed this very result was reached by the Washington Supreme Court in *Tonasket v. State of Washington, vacated and remanded,* 411 U.S. 451 (1973); on *remand* 84 Wash.2d 164, 525 P.2d 744 (1974) *appeal dismissed* 420 U.S. 915 (1975). On remand the Washington Supreme Court affirmed its earlier decision that Public Law 280 granted the State of Washington the power to tax reservation cigarette sales to non-Indians. In its holding, however, the court expressly stated that its decision neither dealt with taxes on trust property, personalty, inventory, gross receipts or income, nor disturbed this Court's holding in *Warren Trading Post v. Arizona Tax Commission, supra,* that the states cannot tax retail sales by federally licensed Indian traders to reservation Indians. 525 P.2d at 754.

Thus if this Court were to uphold Minnesota's approach to Public Law 280 it would have to find, in effect, that Congress intended to impose state taxes on all reservation Indians except those businesses which have secured a federal traders license. We do not believe Congress intended to piecemeal Indian jurisdiction in such an illogical manner.

D. The Buck Act.

Yet another congressional statute is swept aside by the approach of the Minnesota court. We refer to the Buck Act, 4 U.S.C. §§104 et seq. As construed by this Court the Buck Act exempted reservation Indians from an express conferral of income taxing authority to the states over federal enclaves. This Court observed that Congress would not have "jealously" protected the immunity of reservation Indians from state income taxes had it thought the states had residual power to impose such taxes in any event. *McClanahan v. Arizona State Tax Commission,* 411 U.S. at 176, 177. In spite of this the lower court in this case ruled, in effect, that in 1953, just six years after carefully preserving the exempt status of reservation Indians in the Buck Act, Congress swept all of this aside in Public Law 280, an act designed to improve the resolution of criminal and civil disputes. Minnesota would have this immunity "jealously" protected in 1947 but impliedly repealed in 1953.[25]

III.

PUBLIC LAW 280 DOES NOT CONFER TAXING POWER EXPRESSLY–IT SHOULD NOT BE CONSTRUED TO HAVE DONE SO BY IMPLICATION

Repeals by implication such as required to sustain the state's view of Public Law 280 are not favored by

[25]Although the Buck Act provisions conferring (4 U.S.C. §§105 and 106) and excepting (4 U.S.C. §109) state tax authority was with respect to sales and income taxes, the same analysis is appropriate for personal property taxes on Indian reservations.

this Court where unique Indian rights are affected. See *Morton v. Mancari*, 417 U.S. 535 (1974); *Squire v. Capoeman*, 351 U.S. 1 (1956). In *Morton v. Mancari, supra*, this Court refused to find that federal Indian employment preferences had been impliedly repealed by the Equal Employment Opportunity Act of 1972.

> . . . Appellees encounter head-on the "cardinal rule . . . that repeals by implication are not favored." (citations omitted). They and the District Court read the congressional silence as effectuating a repeal by implication. There is nothing in the legislative history, however, that indicates affirmatively any congressional intent to repeal the 1934 preference. Indeed, as explained above, there is ample independent evidence that the legislative intent was to the contrary.
>
> This is a prototypical case where an adjudication of repeal by implication is not appropriate. The preference is a longstanding, important component of the Government's Indian program. The anti-discrimination provision, aimed at alleviating minority discrimination in employment, obviously is designed to deal with an entirely different and, indeed, opposite problem. Any perceived conflict is thus more apparent than real.
>
> 417 U.S. at 549-550.

We believe that *Squire* and *Mancari* are applicable to preserve the Indian tax immunity from repeal by implication. If Congress wanted to allow states to tax Indians' personal property or income it would have done so expressly. This Court should not allow the State to achieve that result by resorting to statutory inferences in a backhanded way. *Menominee Tribe v. United States*, 391 U.S. 404, 412 (1968). This is especially true here, because like *Mancari* the alleged

conflict is more apparent than real, for as we have suggested Congress designed Public Law 280 to achieve two related goals: first to improve the administration of criminal and civil justice on the reservations; and second, to preserve what was thought to be the existing federal Indian legal relationship.

Our interpretation of Public Law 280 is not only supported by the Act's legislative history and language and consistent with other Indian legislation it is compelled by this Court's rules of construction.

As a congressional act benefiting Indians, Public Law 280 must be construed in favor of the Indian beneficiaries for whom it was enacted. *Choate v. Trapp*, 224 U.S. 665, 675 (1912); *United States v. Shoshone Tribe*, 304 U.S. 111, 117 (1938); *Choctaw Nation v. United States*, 318 U.S. 423, 432 (1943); *United States v. Winans*, 198 U.S. 371 (1905); *Squire v. Capoeman*, 351 U.S. 1, 6, 7 (1956); and *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973). When Congress has dealt with Indians, this Court has consistently construed congressional acts in light of the historical circumstances with paramount emphasis being placed on what was intended, understood and consented to by the Indians. *Mattz v. Arnett*, 412 U.S. 481 (1973); *Squire v. Capoeman, supra*, and *Carpenter v. Shaw*, 280 U.S. 363 (1930).[26]

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[26]In determining whether Public Law 280 authorized the State of Minnesota to impose its personal property taxes on the Leech Lake Reservation from the point of view of whether the Indians intended, understood and *consented to* such taxing authority, it is particularly important to note that Public Law 280 as enacted in Minnesota did not require the consent of the affected Indian tribes. However, Public Law 280 was amended in 1968, 82 Stat. 78, 79, 80, 25 U.S.C. §1321-1326 to require the consent of the

Furthermore, this Court has reviewed on many occasions lower court decisions to assure that Indian reservation status and reservation Indian rights afforded by treaties and federal statutes are not extinguished without a clear congressional determination to do so. *Seymour v. Superintendent*, 368 U.S. 351 (1962); *Mattz v. Arnett*, 412 U.S. 481 (1973); and *DeCoteau v. District County Court*, 420 U.S. 425 (1975) (Indian reservation status cannot be impliedly terminated by unilateral act of Congress); *Squire v. Capoeman*, 351 U.S. 1 (1956) (Indian allotment immunity is not extinguished by federal Internal Revenue Code); *Menominee Tribe v. United States*, 391 U.S. 404 (1968) (implied hunting and fishing treaty rights are not abrogated by federal termination acts); *Morton v. Ruiz*, 415 U.S. 199 (1974) (Indian welfare assistance cannot be arbitrarily cut off for off-reservation Indians); and *Morton v. Mancari*, 417 U.S. 535 (1974) (Indian employment preference is not eliminated by federal equal employment legislation). Each of these important Indian rights has been protected by this Court from backhanded extinguishment. Certainly the right of Indians to be free from state taxation while residing and working on their reservations in the absence of an express Act of Congress directing state taxation is of no less significance.

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affected Indian tribe. In the absence of any indication that the Minnesota Indians intended or understood that Public Law 280 would result in exposing their personal property to state taxation, the rules of construction cited above strongly suggest that Public Law 280 not be construed as comprehending state taxation.

CONCLUSION

Petitioner urges this Court to reverse the decision of the Minnesota Supreme Court and declare that Russell Bryan and other members of the Minnesota Chippewa Tribe are entitled to live in their trailers without being exposed to state taxation.

Respectfully submitted,

December 18, 1975

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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-5027

RUSSELL BRYAN, INDIVIDUALLY and
on Behalf of All Other Persons
Similarly Situated,

Petitioner,

vs.

ITASCA COUNTY, MINNESOTA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF MINNESOTA

BRIEF FOR THE RESPONDENT

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OF THE STATE OF MINNESOTA

BRIEF FOR THE RESPONDENT

QUESTION PRESENTED

Does Public Law 280 confer upon the State of Minnesota and Itasca County, a political subdivision of the State of Minnesota acting pursuant to state law, the power to impose a personal property tax upon an enrolled Chippewa Indian with respect to his unrestricted personal property located inside the Leech Lake Indian Reservation?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent constitutional provisions and statutes involved in this case are adequately set forth in Petitioner's Brief at pages 2 through 5.

STATEMENT OF THE CASE

The facts of this case have been stipulated to and are not in dispute. Russell Bryan, an enrolled member of the Minnesota Chippewa Tribe, owns a mobile home which is located inside the Leech Lake Indian Reservation on land held in trust by the United States not for him but for his tribe (A.8). This mobile home is the private personal property of Russell Bryan. There is no contention that it is either restricted property or property held in trust by the United States.[1] Mobile homes are taxable as class 2A personal property in Minnesota pursuant to Minn. St. §§ 168.012, subd. 9; 272.01, subd. 1; and 273.13, subd. 3 (1971). In accordance with this statutory authority, Itasca County assessed a personal property tax liability totaling $147.95 against Bryan for the years 1971 and 1972 (A.9).

On September 11, 1972, Bryan commenced an action in Minnesota District Court against Itasca County and the State of

[1] P. L. 280 provides that "Nothing in this section shall authorize the . . . taxation of any real or personal property . . . belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States . . . ." 28 U.S.C. § 1360(b).

Minnesota seeking both declaratory and injunctive relief against the assessment and collection of such tax (A.1-3). On July 27, 1973, the State of Minnesota was dismissed from the action (A.11). On December 8, 1973, the District Court, after a full hearing and submission of briefs, held that the State of Minnesota and its political subdivisions have the power to tax Indians within the Leech Lake Reservation and consequently awarded judgment in favor of defendant Itasca County for the full amount of the tax (A.14-35).

On February 13, 1974, Bryan appealed from this judgment to the Minnesota Supreme Court. On March 28, 1975, the Minnesota Supreme Court affirmed the decision of the District Court (A.36).

On July 7, 1975, Bryan filed a petition for a writ of certiorari and motion to proceed *in forma pauperis* with the United States Supreme Court. On November 3, 1975, the Court granted the petition for a writ of certiorari and the motion to proceed *in forma pauperis* (A.74).

ARGUMENT

I

INTRODUCTION

It is important that the issue on this appeal be precisely defined so as to avoid any misunderstanding as to what the Court is being called upon to decide. The only issue here is whether the State of Minnesota has jurisdiction to impose a tax on the personal, unrestricted and non-trust property of an Indian where the Indian resides on the Leech Lake Indian Reservation and the property is located on said reservation.

It should be noted at the outset that there is no question in this case that the State of Minnesota is attempting to impose a tax upon tribal trust or restricted property. Throughout this litigation both parties have proceeded on the assumption that the mobile home involved is solely owned by Petitioner Bryan as his personal property. Therefore, Petitioner's implication in his Brief at page 48, that the mobile home is really a part of the trust land that is being taxed only because Minnesota has chosen to classify such property as personal, merely serves to confuse matters.

The decision of the Minnesota Supreme Court dealt with this point:

> Plaintiff has, for the first time, alleged in his brief that his mobile home was in fact annexed to tribal trust land, and thus is exempt under Public Law 280. However, in his complaint plaintiff does not allege that the mobile home is real property. In fact, paragraph 9 of his complaint states the defendant has no lawful authority "to assess or impose a tax upon his *personal property.*" (Italics supplied.) This entire lawsuit and appeal were

predicated on the assumption that this mobile home was in fact personal property. The trial court in its findings stated:

> "That there is no claim that the 1972 Skyline mobile home is any part of the real estate, but is personal property."

Therefore, we do not rule as to whether the mobile home can be taxed if in fact it is permanently affixed to the realty and cannot be removed by the owner, and thus is assessable in the manner of real estate taxes. This court has repeatedly refused to decide issues first raised on appeal. Rathbun v. W. T. Grant Co., —— Minn. ——, 219 N.W.2d 641 (1974); Tourville v. Tourville, 292 Minn. 489, 198 N.W.2d 138 (1972).

Consequently, Petitioner's indirect, albeit limited, attempt to raise the question now on page 48 of his Brief should be ignored by the Court.

It is settled law that the United States Supreme Court will not undertake to review for the first time issues which the court below did not decide. *Walters v. City of St. Louis,* 347 U.S. 231, 74 S.Ct. 505, 98 L.Ed. 660 (1954); *Duignan v. United States,* 274 U.S. 195, 47 S.Ct. 566, 71 L.Ed. 996 (1927).

Keeping the exact issue in this case in mind, Respondent submits that Public Law 280 gives the State of Minnesota jurisdiction to impose a tax on Petitioner Bryan's personal property.

II

PUBLIC LAW 280 GRANTS THE STATE OF MINNESOTA THE JURISDICTION TO IMPOSE A TAX UPON AN INDIVIDUAL INDIAN WITH RESPECT TO HIS PRIVATE, UNRESTRICTED AND NON-TRUST PERSONAL PROPERTY WHICH IS LOCATED ON THE LEECH LAKE INDIAN RESERVATION.

In 1953 Congress enacted Public Law 280, which has been characterized by this Court as a grant to several states, including Minnesota, of "full civil and criminal jurisdiction over Indian Reservations". *Organized Village of Kake v. Egan*, 369 U.S. 60, 74, 82 S.Ct. 562, 570, 7 L.Ed.2d 573 (1962). The question of whether this broad grant of power includes giving to the states jurisdiction to impose their taxes within such Indian reservations has never been resolved by this Court. See *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164, 178, 93 S.Ct. 1257, 1265, 36 L.Ed.2d 129 (1973), fn.18. However, the present appeal now squarely raises the issue.

The precise issue herein is whether section 2 of P.L.280 operates to make Minnesota's personal property tax applicable to non-trust and unrestricted personal property of an individual Indian which is located within the Leech Lake Indian Reservation. The question is therefore one of statutory construction which can be simply resolved by the application of well-settled rules governing the interpretation of statutes.

The first and most important rule, frequently stated by this Court, is that in matters of statutory construction this Court's duty is to give effect to the intent of Congress, and that in doing so its first reference is to the language of the statute itself. *Flora v. United States*, 357 U.S. 63, 78 S.Ct. 1079, 2 L.Ed.2d 1165 (1958); *A. Magnano Co. v. Hamilton*, 292 U.S.

40, 54 S.Ct. 599, 78 L.Ed. 1109 (1934). Furthermore, in looking at the words of a statute the basic rule is that they are to be given their ordinary and everyday meanings in the absence of persuasive reasons to the contrary. *Banks v. Chicago Grain Trimmers Assn.*, 390 U.S. 459, 88 S.Ct. 1140, 20 L.Ed.2d 30 (1968); *Malat v. Riddell*, 383 U.S. 569, 86 S.Ct. 1030, 16 L.Ed.2d 102 (1966).

Following these guidelines one can read P.L.280 and plainly see that it is a comprehensive grant of complete civil and criminal jurisdiction, with certain enumerated exceptions, to the named states. The words of the statute itself are the starting point from which Congressional intent is to be derived, and because in this case the words are so clear and unambiguous, they bear repeating. The section granting civil jurisdiction, codified as 28 U.S.C. §1360(a) (1970), is as follows:

> Each of the States or Territories listed in the following table *shall have jurisdiction over civil causes of action* between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and *those civil laws of such State* or Territory *that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State* or Territory. (Emphasis added.)

The section granting criminal jurisdiction, codified as 18 U.S.C. § 1162(a) (1970), is as follows:

> Each of the States or Territories listed in the following table *shall have jurisdiction over offenses* committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same

> extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and *the criminal laws of such State* or Territory *shall have the same force and effect within such Indian country as they have elsewhere within the State* or Territory. (Emphasis added.)

The key language with which this case is concerned are the words in 28 U.S.C. § 1360(a) which say: ". . . those civil laws . . . that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State. . . ." Clearly the personal property tax laws of Minnesota are "civil laws" of the state "that are of general application to private persons or private property." Therefore, under the plain wording of the act, these civil laws are specifically made applicable to the personal property of Russell Bryan and have the same force and effect on the Leech Lake Reservation as they have elsewhere in Minnesota. Furthermore, a court proceeding to collect an Indian's personal property tax is clearly a "civil cause of action . . . to which Indians are parties, . . ." within the meaning of 28 U.S.C. § 1360(a) (1970).

Used in its ordinary and everyday sense the term "civil" denotes "rights and remedies sought by action or suit distinct from criminal". Webster's Third International Dictionary, Unabridged (1964). Congress, of course, often uses the phrase "civil action" simply to distinguish a proceeding from a criminal action. *See, McLean Trucking Co. v. United States*, 387 F.2d 657 (Ct.Cl. 1967); *Range Oil Supply Co. v. Chicago Rock Island and Pac. R.R.*, 140 F.Supp. 283 (D.Minn., 1956). That this was the meaning intended by Congress in P.L. 280 is made clear by the general structure of the law. There are only two

jurisdictional sections, one for civil and one for criminal jurisdiction. If Congress had conceived a third class of laws encompassing state tax laws, land use regulations, water laws and other general noncriminal laws and had considered that these laws were enforced by a judicial proceeding which is neither criminal nor civil, it is likely that it would have dealt with that class in a third section or have wholly excepted that class from the operation of both the civil and criminal sections. However, it took neither of these approaches. Instead it merely subjected the broad grants of jurisdiction to limited exceptions in favor of trust and restricted property.

Also, in particular reference to taxation, actions to collect a tax or to obtain refunds have often been held to be "civil actions". *See, State v. Ward*, 189 Okla. 532, 118 P.2d 216 (1941); *Johnston v. State*, 212 Ind. 375, 8 N.E.2d 590 (1937); *In re Atchison, Topeka & Sante Fe Ry. Co.'s Taxes in Eddy County for 1933*, 41 N.M. 9, 63 P.2d 345 (1936); *Boston & M.A.P.R.R. v. State*, 75 N.H. 513, 77 Atl. 996 (1910).

In this regard, the United States Supreme Court has specifically held in *Goudy v. Meath*, 203 U.S. 146, 27 S.Ct. 48, 51 L.Ed. 130 (1906), that the statutory subjection of an Indian to both the civil and criminal laws of a state, coupled with a grant of citizenship, subjects him to state taxation like any other citizen and resident of the state. In the language of the Court in 203 U.S. at 149-150:

> But further, by the act of February 8, 1887, plaintiff became and is a citizen of the United States. That act, in addition to the grant of citizenship, provided that "Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and crimi-

nal, of the state or territory in which they may reside." Re Heff, 197 U.S. 488, 49 L.ed. 848, 25 Sup. Ct. Rep. 506.

Among the laws to which the plaintiff as a citizen became subject were those in respect to taxation. His property, unless exempt, became subject to taxation in the same manner as property belonging to other citizens, . . . [I]t is disregarding the act of Congress to hold that the Indian having property is not subject to taxation when he is subject to all the laws, civil and criminal, of the state.

Respondent's position in this case cannot be more clearly and succinctly stated than it is by the Minnesota Supreme Court in the decision below.

The language of Public Law 280 lends support to defendant's assertion of power to levy the tax at issue. Specifically, 28 USCA § 1360, provides as follows:

"(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, *and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:*

"State or Territory of	Indian country affected
Alaska	All Indian country within the Territory
California	All Indian country within the State

Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State.

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section." (Italics supplied.)

Defendant logically argues that unless paragraph (a) is interpreted as a general grant of the power to tax, then

the exceptions contained in paragraph (b) are limitations on a nonexistent power.

* * *

A review of the legislative history of the act discloses that this provision was enacted in furtherance of the congressional policy of "termination" as expressed in H. R. Con. Res. 108, 83rd Cong. 1st Sess., 67 Stat. B 132, which states:

"* * * [I]t is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and

"* * * the Indians within the Territorial limits of the United States should assume their full responsibilities as American citizens."

. . . [W]e accept the logic of defendant's position that it would make little sense for Congress to grant full civil and criminal powers to the state over all Indian territory and all Indian tribes in Minnesota (except the Red Lake Band) and specifically exempt certain property from taxation if the power to tax were not included within the original civil powers granted. See, Note, 39 Minn. L. Rev. 853.

The case most directly in point is a recent decision reached in the Federal District Court for the District of Nebraska in Omaha Tribe of Indians v. Peters, 382 F. Supp. 421 (D. Neb. 1974). That court held that Public Law 280 granted the State of Nebraska the power to levy

a state income tax upon the income derived by an Indian from employment on the reservation. The following excerpts from the court's opinion are relevant:

"* * * [I]t should be noted that P. L. 280 does not subject Indians to the jurisdiction of the state *by implication*. The statute is a clear and express grant of power subject only to the limitations stated in the ensuing sections of the statute. * * *

* * * * *

"* * * Given Congress' power to end the federal guardianship in total, it obviously has the power to establish an orderly program looking to the day when the guardianship can be ended. That is precisely the type of program evidenced by the statute in this case. *See* U. S. Code Cong. & Admin. News, p. 2409 et seq. [1953]. The statute also suggests that Congress felt that the termination of the federal guardianship over the affected tribes should result in their assimilation into the mainstream of life of the states wherein they are located. P. L. 280 is a step intended to prepare the Indian tribes for this assimilation by making all state laws applicable to Indians and in Indian country except as those laws may contravene the provisions of the statute itself.

* * * * *

"The language and structure of P. L. 280 strongly suggest that Congress intended to convey to the states the authority to enforce its revenue laws in Indian country. *The statute grants civil jurisdiction to the states over causes of actions involving Indians as parties and states that the civil laws of general application*

shall have the same force and effect as to Indians and within Indian country as they have throughout the state. This grant of power is then modified in later subsections to permit the federal government to retain its authority in certain areas such as over Indian trust property. One can only presume that the grant of jurisdiction in subsection [a] was to be considered plenary except as it was expressly limited by the statute. Any other interpretation of subsection [a] would require this Court to read into that section something which simply is not there. If Congress had intended to exempt Indians from the state's revenue laws, the Court feels certain that it would have expressly done so, as it exempted certain other Indian property from state jurisdiction in subsection [b] of P. L. 280, and as it expressly exempted reservation Indians from the provisions of the Buck Act. 4 U.S.C.A. § 109. By failing to quality [sic] subsection [a] Congress has expressly subjected Indians and Indian country to *all* state laws of general application including state revenue laws except where the application of those laws would violate one of the stated jurisdictional limitations in the statute.

"The above interpretation is strongly supported by the legislative history of P. L. 280. U. S. Code Cong. & Admin. News, pp. 2409, 2412 [1953] indicates that P. L. 280 was drafted because

'the Indians of several States have reached a stage of acculturation and development that makes desirable extension of States civil jurisdiction to the Indian country within their borders. Permitting the State courts to adjudicate civil controversies arising

on Indian reservations, and to extend to those reservations the substantive civil laws of the respective States insofar as those laws are of general application to private persons or private property, is deemed desirable.'

It was Congress' goal that this legislation be a step toward the day when the federal trusteeship over Indians could be finally ended through the assimilation of the tribes into the mainstream of life of the affected states. *Id.* at 2409; Williams v. Lee, *supra*, 358 U. S. at 220, 79 S. Ct. 269. There is no suggestion in either the legislative history of the Act, or in the language of the Act itself, that Congress intended that Indian tribes should derive the advantages of state law, while, at the same time, being shielded from its burdens." (Italics supplied in part.) 382 F. Supp. 424.[2]

Thus the above-quoted authorities demonstrate that Public Law 280 gives the State of Minnesota jurisdiction and authority to impose a personal property tax on Petitioner's mobile home.

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[2] The Federal District Court's decision in *Omaha Tribe of Indians v. Peters*, 382 F.Supp. 421 (1974), was affirmed by the Eighth Circuit Court of Appeals, 516 F.2d 133 (1975), and on December 8, 1975, the United States Supreme Court denied certiorari.

III

THE GRANT OF TAXING AUTHORITY TO MINNESOTA BY PUBLIC LAW 280 IS CONSISTENT WITH OTHER CONGRESSIONAL ACTS CONCERNING INDIANS.

Petitioner's construction of P.L. 280 in light of other Congressional acts concerning Indians (Petitioner's Brief, pp. 49-55) is, of course, a legitimate exercise. However, the conclusions he draws are quite erroneous. The federal statutes cited by Petitioner do indeed grant certain privileges and continued Federal assistance to P.L. 280 reservations. However, as will be seen, this does not lessen the broad grant to the states of civil and criminal jurisdiction over such reservations.

Since House Concurrent Resolution 108 has never been repealed, it still stands as the official Congressional policy on Indian affairs. That document stands for a policy of assimilation of Indians into the rest of American society. It has also been shown that this policy was implemented essentially by two methods. One method was to terminate the Federal government's responsibility and supervision over certain tribes at once. The other method was the adoption of P.L. 280, which granted full civil and criminal jurisdiction to the named states over Indian country, while at the same time continuing, to a limited extent, those special rights and privileges of the Indians which Congress considered were still needed. Therefore, contrary to what Petitioner would have the Court believe, Respondent recognizes that certain limitations were built into the conferral of jurisdiction made by P.L. 280. At no time has either Itasca County, the State of Minnesota or the Minnesota Supreme Court contended that P.L. 280 is a termination act.

To the contrary, P.L. 280 is a careful and deliberate implemention of the policy of assimilation "as rapidly as possible" expressed in House Concurrent Resolution 108, whereby Congress chose to slowly accustom selected Indian reservations to the rights and responsibilities of the rest of American society while at the same time lessening the impact of this change in legal status by continuing a wide range of Federal protections and services. Thus Congress has, consistently with P.L. 280, continued to provide numerous services to reservation Indians in the areas of housing, economic development, employment assistance, education, medical care and foster child care. See, *Indians In Minnesota*, League of Women Voters of Minnesota (1971). Certainly, the existence of these programs does not establish *per se* that Congress intended to limit the otherwise broad grant of jurisdiction in P.L. 280.

The four Federal statutes cited by Petitioner are clearly not inconsistent with P.L. 280; especially since none of them specifically grants an immunity to Indians from the state taxation which P.L. 280 allows. The extension of state taxing powers by P.L. 280 does not terminate tribal self-government nor does it intrude on the right of the tribes themselves to levy taxes on their reservations pursuant to the Indian Reorganization Act, 25 U.S.C. §§ 475, 476, 477. Their tribal taxing power is still just as viable as the taxing power of any other local government, wealthy and poor alike, which must also share the available tax base with other units of government.

Petitioner's argument that state taxation of reservation Indians would be inconsistent with the Indian Financing Act, 88 Stat. 77, § 2, P.L. 93-262, is erroneous as well as irrelevant. If Congress had wanted to specially protect these funds from state taxation it could have done so expressly, but it did not do so. Furthermore, there is nothing in the record of this case to show that Russell Bryan or any other person similarly

situated receives any funds directly through the Indian Financing Act or that the funds used to purchase his mobile home were so acquired.

By the same token, Petitioner's arguments concerning P.L. 280's effect on the Indian Trading Statutes, 25 U.S.C. §§ 261 and 262 are also irrelevant to a determination of the present case. No questions concerning Federal Indian traders or their tax immunities have been raised on this appeal, and any discussion at this time concerning P.L. 280's effect on them is pure speculation.

Finally, P.L. 280 does not "sweep aside" any tax exemptions granted by the Buck Act, 4 U.S.C. § 104 *et seq.*, as Petitioner contends (Petitioner's Brief, pp. 34-35). The Buck Act, which comprehensively regulates state taxation of those persons living in Federal areas, merely states that "[n]othing in sections 105 and 106 of this title shall be deemed to authorize the levy or collection of any tax on or from any Indian *not otherwise taxed*". 4 U.S.C. § 109 (emphasis added). As this Court recognized in *McClanahan*, 411 U.S. at page 177, the Buck Act certainly cannot be read as "an affirmative grant of tax-exempt status to reservation Indians". Rather, the provisions of the Buck Act simply have no application to reservation Indians when, by virtue of some *other* governing Federal statute or treaty, they are subjected to state taxation. P.L. 280 is such a governing statute.

CONCLUSION

For all the foregoing reasons it is respectfully submitted that the judgment of the Supreme Court of Minnesota should be affirmed.

Respectfully submitted,

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No. 75-5027

In the Supreme Court of the United States

OCTOBER TERM, 1975

RUSSELL BRYAN, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED, PETITIONER

v.

ITASCA COUNTY, MINNESOTA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

MEMORANDUM FOR THE UNITED STATES AS *AMICUS CURIAE*

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CITATIONS

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INTEREST OF THE UNITED STATES

This case presents the question whether, by virtue of Public Law 280,[1] the State of Minnesota or the County of Itasca may impose a personal property tax on a mobile home that belongs to an enrolled Chippewa Indian, is used as his permanent home and is located within the Leech Lake Reservation on land held by the United States in trust for the Chippewa Indians. Because of its treaty and trust obligations to reservation Indians the United States is interested in protecting such Indians from diminutions, not expressly authorized by Congress, of their immunities from state taxation. The United States is also concerned that Public Law 280 be interpreted so as to effectuate its purpose.

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[1]Sections 2 and 4 of the Act of August 15, 1953, 67 Stat. 588, 589, 18 U.S.C. 1162, 28 U.S.C. 1360; Act of April 11, 1968, Title IV, 82 Stat. 78, *et seq.*, 25 U.S.C. 1321, *et seq.*

STATEMENT

The petitioner, Russell Bryan, is an enrolled member of the Minnesota Chippewa Tribe who lives with his family in a mobile home on the Leech Lake Reservation.[2] The mobile home "is his permanent and continuous residence" (Stipulation 2, App. 8). It "has regular permanent connections for water, sewer and electric service" and is located on land held in trust by the United States for the Tribe *(ibid.)*.

During the summer of 1972, petitioner received notices from the Auditor and the Treasurer of Itasca County that he had been assessed a total of $147.95 in personal property taxes on the value of his mobile home for the years 1971 and 1972. Thereafter, he brought this action in a state district court on behalf of himself and others similarly situated against Itasca County, the State of Minnesota, and the State Commissioner of Taxation seeking a declaratory judgment that the State and County have no authority to levy such a tax and an order enjoining its collection. Subsequently, on petitioner's motion, the State and State Tax Commissioner were dismissed as defendants (App. 11).

The district court ruled that the County was entitled to judgment against petitioner in the amount of the tax (App. 16) and entered judgment accordingly (App. 12-13). It adopted the stipulation of the parties as its findings of fact

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[2]The Minnesota Chippewa Tribe is a federally recognized tribe with a Constitution and By-Laws approved by the Secretary of the Interior. See *Leech Lake Band of Chippewa Indians* v. *Herbst*, 334 F. Supp. 1001 (D. Minn.). Its Reservation was established by the Treaty with the Chippewas of February 22, 1855, 10 Stat. 1165, reproduced at App. 58-67.

(App. 14-16) with an additional finding (Finding 9, App. 16) "[t]hat there is no claim that the * * * mobile home is any part of the real estate, but is personal property." In a memorandum opinion the court held that Public Law 280 authorized state taxation within the Reservation "except in certain instances which are not applicable to the situation here involved" (App. 18). The court attached, as part of its memorandum, pages from the brief of the Commissioner of Taxation to the effect that the Minnesota Constitution and Public Law 280 permit the taxation at issue (App. 20-35).

The Minnesota Supreme Court affirmed (App. 36-48). It rejected the district court's conclusion that the Minnesota Constitution expressly authorized the taxation, noting that the Minnesota Enabling Act is silent about Indian lands (App. 39) and that the Minnesota Supreme Court previously held that, in the absence of a treaty or federal statute giving the state jurisdiction within a Reservation, its jurisdiction "does not extend over the individual members of an Indian tribe maintaining their tribal relations and organization upon a reservation within * * * the state" (App. 40). But the court held that the grant of civil jurisdiction to the State in Public Law 280, codified as 28 U.S.C. 1360(a), includes taxing authority, and, since 28 U.S.C. 1360(b) does not exempt non-trust property from this authority, the County may assess the tax in question (App. 41-48).

The court stated further that petitioner had, for the first time, alleged in his brief before that court that the mobile home was in fact annexed to tribal trust land and is thus exempted from state taxation under 28 U.S.C. 1360(b) Stating that the case had been tried on the basis that the mobile home was personal property, the court declined to rule on whether the "mobile home can be taxed

if in fact it is permanently affixed to the realty and cannot be removed by the owner, and thus is assessable in the manner of real estate taxes" (App. 48).

ARGUMENT

Whether Public Law 280 altered state powers of taxation within Indian reservations is an issue the Court had before it in *Tonasket* v. *Washington*, 411 U.S. 451.[3] In that case, the United States filed an *amicus curiae* brief in which, after discussing this statute and its legislative history, we concluded that by enacting Public Law 280 Congress did not "give additional taxing power to States which elect to make their judicial process available to reservation Indians" (U.S. Brief, p. 15).[4]

The Court in *Tonasket*, however, did not decide the question; instead it remanded the case for reconsideration in light of recent state legislation and the decision in *McClanahan* v. *Arizona State Tax Commission*, 411 U.S. 164, which held that Arizona could not impose a tax on the income of Navajo Indians residing on the Navajo Reservation. 411 U.S. at 177-181. The Court later dismissed for want of a substantial federal question an appeal from the decision on remand in *Tonasket*, thereby leaving open the Public Law 280 question presented here. *Tonasket* v. *Washington*, 420 U.S. 915.[5]

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[3]The Court reserved decision on the issue in *McClanahan* v. *Arizona State Tax Commission*, 411 U.S. 164, 178, n. 18.

[4]We are serving copies of our brief in *Tonasket* upon the parties in this case. In *Tonasket*, a Colville Indian who owned a store on the Reservation sued the State of Washington, claiming that the State had no authority to require him to collect cigarette taxes on his sales to Indians and non-Indians.

[5]On remand, the Supreme Court of Washington had held that (84 Wash. 2d 164, 181, 525 P. 2d 744, 754):

Since our *amicus* brief in *Tonasket* fully discusses the purpose and effect of Public Law 280 in regard to state taxing authority and since petitioners have thoroughly argued the issue in their brief, with which we agree, this memorandum will not repeat all of the arguments more fully developed in our *Tonasket* brief.

1. In the absence of special authorization from Congress, States lack taxing authority with respect to Indian property on Indian reservations. See *Mescalero Apache Tribe* v. *Jones*, 411 U.S. 145, 148; McClanahan v. *Arizona State Tax Commission*, 411 U.S. 164, 176-177; *United*

> Public Law 83-280 grants authority to the State to extend its cigarette excise tax to Indian retailers serving *non-Indian consumers* within the boundaries of a reservation over which state civil and criminal jurisdiction has been assumed. (Emphasis added.)

By thus holding only that Public Law 280 authorized the State to require an Indian retailer to affix cigarette tax stamps and *collect* the tax on sales to non-Indians, the court avoided deciding whether Public Law 280 authorized state taxes on reservation Indians. The court specifically characterized the cigarette tax as (84 Wash. 2d at 180, 525 P. 2d at 754) "among other things, one levied upon the 'use' and 'consumption' of cigarettes"—as to non-Indians, a matter within the State's police power as a health regulation. The court further stated (84 Wash. 2d at 180, 525 P. 2d at 754):

> [W]e note that this case does not involve a tax on trust lands, personalty, gross receipts, or income, * * *. [I]t would be dubious, to say the least, whether the state could compel him [the Indian retailer] to affix cigarette tax stamps or collect a retail sales tax in connection with his retail transactions with reservation Indians. *Warren Trading Post Co.* v. *Arizona Tax Comm'n*, 380 U.S. 685, 85 S.Ct. 1242, 14 L.Ed. 2d 165 (1965).

In light of this narrow holding, the Court's disposition of the appeal in *Tonasket* after remand was not a determination of the merits of the issue in the present case, involving a direct tax on a reservation Indian's home. See, also, *Fusari* v. *Steinberg*, 419 U.S. 379, 392 (concurring opinion of Mr. Chief Justice Burger).

States v. *Rickert*, 188 U.S. 432. "[I]n the special area of state taxation, absent cession of jurisdiction or other federal statutes permitting it, there has been no satisfactory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation * * *." *Mescalero Apache Tribe* v. *Jones*, *supra*, 411 U.S. at 148.

Likewise, with respect to the particular facts of this case, no State may—without specific congressional authorization—impose a personal property tax on the mobile home of an enrolled Indian located on trust land and used as his or her permanent residence. The reasons for the exemption are clear:[6]

> Wherever personal property is acquired by or for tribal Indians for use on Indian reservation lands in connection with or in furtherance of the policy adopted by the Government in encouraging the Indians to cultivate the soil and to establish permanent homes and families, or otherwise aid in their economic rehabilitation, such property may not be taxed by the state.

Thus the tax involved here could be imposed only if Public Law 280 authorized the state to impose it. But Public Law 280 by its terms is a grant of jurisdiction to certain States[7] over civil causes of action, not a grant of

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[6]Cohen, *Handbook of Federal Indian Law* 262 (1942); see also United States Department of the Interior, *Federal Indian Law* 866 (1958).

[7]The Act originally applied only within the States of California, Minnesota, Nebraska, Oregon and Wisconsin, but it permitted other States, by subsequent affirmative action, also to assume jurisdiction under its provisions. The consent of the Indians affected was not required. Public Law 280, 67 Stat. 590, Sections 6 and 7. In 1968, the Act was amended to provide that thereafter a State could assume the jurisdiction authorized by the Act only "with the consent of the * * * tribe, occupying the particular Indian country" affected, in the form of a majority vote of the enrolled adult Indians affected. 82 Stat. 78, 79, 80,25 U.S.C. 1321(a), 1322(a), 1326.

taxing power. Its stated purpose is "to confer jurisdiction * * * [on certain States], with respect to criminal offenses and *civil causes of action* committed or arising on Indian reservations within such States * * *." (Emphasis supplied.) In addition to conferring criminal jurisdiction with respect to crimes involving Indians (18 U.S.C. 1162), the Act provides that certain States shall have "jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in * * * Indian county [within such States] * * * to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory." 28 U.S.C. 1360(a).

The Act was primarily concerned with providing state authority for the enforcement of criminal law and the trial of civil causes of action affecting reservation Indians. The reference to "civil laws of such State * * * of general application" is properly read in conjunction with the phrase "causes of action." Such state civil laws provide the rules for decision in private disputes involving Indians, thus giving the state court a body of law by which to decide such disputes. This interpretation is consistent with the further provision in Public Law 280 directing that "[a]ny tribal ordinance or custom * * * if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section." 28 U.S.C. 1360(c).

This Court's reference to the Act in *Kennerly* v. *District Court of Montana*, 400 U.S. 423, as an "extension of state jurisdiction over civil causes of action by or against Indians arising in Indian country" (*id.* at 427) and the Court's reference to the 1968 amendments as "a new regulatory

scheme for the extension of state civil and criminal jurisdiction to litigation involving Indians arising in Indian country" (*id.* at 428), also support this view. State tax laws, in any ordinary sense, are not part of the body of general laws relevant to the resolution of civil disputes on Indian reservations, and are neither expressly nor by implication made applicable within reservations. While it is true that without civil or criminal jurisdiction over reservation Indians a State's tax could neither be imposed nor collected effectively, *McClanahan* v. *Arizona State Tax Commission, supra,* 411 U.S. at 178, it does not follow that the grant of such jurisdiction carries with it the authority to tax.

Public Law 280's exemptions from state taxation, set forth in 28 U.S.C. 1360(b) and relied upon by the Minnesota Supreme Court (App. 43), are not to the contrary. The express reference to immunity from state taxation for trust property does not mean that the State may impose taxes with respect to other property. Rather, this provision merely illustrates the general understanding, as we discuss below, that Public Law 280 would not affect state power to tax Indians (see U.S. Brief *Amicus Curiae* in *Tonasket, supra,* at pp. 8-11).

Moreover, the purpose of the tax immunity—to encourage reservation Indians to take up permanent residence and to assist in their economic development (see p. 6, *supra*)—is not tied to the particular character of the Indian property involved. While a building attached to trust land would rather plainly fall under the express provision barring state taxation of real property held in trust (see *Mescalero Apache Tribe* v. *Jones, supra,* 411 U.S. at 158), there is no apparent reason why Congress would have continued the exemption for this type of property but at the same time authorized the States to tax property such as petitioner's mobile home, which is his "permanent and

continuous residence" and has "regular permanent connections for water, sewer and electric service" (App. 8).

Indeed, although the issue has not been raised, it may be that petitioner's mobile home is in any event immune from state taxation because of the express provision in Public Law 280 exempting real property held in trust. To be sure, a state may classify a mobile home as personal property. But whether petitioner's mobile home should nevertheless come under the express exemption turns not on state law but on federal law, as *United States* v. *Rickert,* 188 U.S. 432, 442-444, indicates;[8] and the federal test for determining whether certain property came within the Public Law 280 exemption would have to take account of the degree of connection of the property with the use of the land itself. However, the difficulty of drawing such fine distinctions and the total absence of any congressional attention to this subject during the deliberations leading to

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[8] In *Rickert,* Roberts County, South Dakota, sought to tax permanent improvements on trust property that were classified as personal property by state law. The Court rejected this attempt (188 U.S. at 442):

> But that classification cannot apply to permanent improvements upon lands allotted to and occupied by Indians, the title to which remains with the United States, the occupants still being wards of the Nation, and as such under its complete authority and protection. The fact remains that the improvements here in question are essentially a part of the lands, and their use by the Indians is necessary to effectuate the policy of the United States.

The Court further held that the County could not tax personal property used by Indians in the cultivation of their trust land (*id.* at 443-444). See also *Mescalero Apache Tribe* v. *Jones, supra,* 411 U.S. at 158-159, invalidating a state compensating use tax on materials used in construction of a ski lift and citing *Rickert* in support of the proposition that permanent improvements on a tribe's tax-exempt land are immune from state property tax.

enactment of Public Law 280 strongly suggest that Congress did not intend Public Law 280 to be construed as a grant of taxing authority to the States.

2. The legislative history of Public Law 280 indicates that it was intended primarily to provide an improved method for resolving civil disputes and to remedy what was perceived to be inadequate law enforcement on some reservations. H.R. Rep. No. 848, 83d Cong., 1st Sess. (1953); see Goldberg, *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians*, 22 U.C.L.A. L. Rev. 535, 540-544 (1975). There is nothing in the committee reports or debates on the bill to show that Congress intended the Act's conferral of civil and criminal jurisdiction to extend the States' power to tax Indians. Yet if this were intended, it would have been a matter of sufficient importance to evoke discussion within Congress and opposition from the tribes. As petitioner demonstrates (Br. 37-41), the congressional hearings suggest to the contrary that Congress understood that States assuming jurisdiction under the Act would get no federal subsidy and no increased tax revenue (see also U.S. Brief *Amicus Curiae* in *Tonasket, supra*, at pp. 7-10).

Given the absence of language clearly authorizing state taxation of reservation Indians, and the absence of any legislative history showing an intent to permit such taxation, Public Law 280 is at best ambiguous as to state taxation of reservation Indians. The ambiguity should be resolved in favor of the Indians. See *Squire* v. *Capoeman*, 351 U.S. 1, 5-7; *Carpenter* v. *Shaw*, 280 U.S. 363, 367.

3. Although, as stated above, Congress chose not to subsidize the States for undertaking to provide judicial

services within Indian reservations, we pointed out in our brief in *Tonasket* (pp. 13-15):

> Merely because a State undertakes to provide judicial services within an Indian reservation, it does not follow that fairness requires that it also be given new taxing authority within the reservation. The States already have substantial sources of income attributable to Indians. Without requiring any particular service from the States, Congress has since 1924 permitted them to tax Indian mineral holdings, 42 Stat. 244, 25 U.S.C. 398, which have often been the only substantial wealth on land noted for its poverty. Though it is of less significance, Congress has also, without requiring any specific service for the Indians, allowed State gasoline and motor fuel taxes to be imposed on all sales within Indian reservations. 4 U.S.C. 104, 109. Moreover, a substantial part of the goods purchased by Indians living within a reservation are ordinarily purchased outside the reservation where the purchases are subject to state sales taxes without regard to the substantiality of services rendered the purchaser by the State. * * * Considerable sums are annually expended by the federal government on [Indian development] programs for tribes which have become subject to state criminal and civil jurisdiction. * * * These and other programs substantially reduce state responsibilities for providing services to reservation Indians and justify immunities from state taxes which would siphon off resources supplied by the federal government for the benefit of the Indians and income earned by the Indians who remain on reservations and under federal protection.

In contrast, as we also pointed out in our brief in *Tonasket* (pp. 12-13), the 1968 amendments to Public Law

280 permits States to obtain civil and criminal jurisdiction over reservation Indians only with their consent. Adding a tax consequence to an election to submit to such jurisdiction would seriously discourage any further elections in favor of such jurisdiction and would frustrate the essential purpose of the Act—to make state courts and law enforcement available within reservations where tribal and federal services may be inadequate.[9]

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of Minnesota should be reversed.

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[9]Since the issue has not been raised, it has not been decided whether the tax involved here is a State or county tax. In our view, however, even if Public Law 280 confers taxing authority on the State, it does not do so for political subdivisions of the State. Public Law 280 makes applicable only "those civil laws of such *State or Territory* that are of *general application*," 28 U.S.C. 1360(a) (emphasis added), and 28 U.S.C. 1360(c) reserves the authority of tribal ordinances and custom not inconsistent with *State* civil laws without mentioning county or municipal laws. Since municipal or county laws are not State laws of general application, the Act does not authorize the imposition of county or municipal taxes within reservations in respect to Indian property or income. Cf. *Moody* v. *Flowers*, 387 U.S. 97, 101.

Moreover, as the Court of Appeals for the Ninth Circuit recently stated in holding that county zoning ordinances and building codes could not be applied to an Indian reservation subject to Public Law 280 (*Santa Rosa Band of Indians* v. *Kings County*, No. 74-1565, decided November 3, 1975, slip op. 11), tribal governments under the statute are "more or less the equivalent of a county or local government in other areas within the state * * *." They have the authority to impose their own taxes within their reservations. *Morris* v. *Hitchcock*, 194 U.S. 384; see also United States Department of the Interior, *Federal Indian Law* 885-887 (1958). Thus, if the reservation, which is itself a unit of local government, is subjected to taxation by counties and municipalities, it is put at the bottom of the taxing order—a result inconsistent with Congress' concern in Public Law 280 (see 28 U.S.C. 1360(b)) for the preservation of Indian tax immunities. See Goldberg, *supra*, 22 U.C.L.A. L. Rev. at 580-583.

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